4448.

SUPREME COURT OF THE UNITED STATES.

No. 150.

MYRA CLARK GAINES, APPELLANT,

vs.

FRANCOIS DUSUAU DE LA CROIX, RICHARD RELF, AND BEVERLY CHEW.

APPEAL FROM THE CIRCUIT COURT, UNITED STATES, FOR THE EASTERN DISTRICT OF LOUISIANA.

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[Gibson, Print.]

1446.

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

MYRA CLARK GAINES
vs.
FRANÇOIS D. DE LA CROIX, Richard Relf, and Beverly Chew. } No. 1731.

Pleas and proceedings before the honorable the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, being the December term, 1849, of the said court, held at the city of New Orleans, in the district aforesaid, on the ninth day of February, A. D. 1850.

Be it remembered, that heretofore, to wit, on the twenty-eighth day of July, A. D. 1848, came the complainant, by her solicitor, P. C. Wright, esq., and filed in the clerk's office of the said court an amended and supplement bill of complaint, in the words and figures following, to wit:

In chancery.

To the judges of the United States circuit court, for the fifth circuit, within and for the district of Louisiana.

Edmund P. Gaines and Myra Clark Gaines, his wife, who are citizens of the State of Tennessee, by leave of the court first had and obtained, bring this their amended and supplemental bill of complaint against Richard Relf, Beverly Chew, and François Dusuau de la Croix, all of the State of Louisiana, and are citizens thereof.

And thereupon your orator and oratrix complain and say, that heretofore, to wit, on the 28th day of July, 1836, your oratrix, then the wife of William Wallace Whitney, now deceased, with her said husband, filed her bill of complaint in this honorable court, wherein your oratrix, with her said husband, were complainants, and the above named Richard Relf, Beverly Chew, and François Dusuau de la Croix, with others, were defendants.

That in said bill of complaint it was stated and set forth, amongst other matters, that Daniel Clark, late of the city of New Orleans, in the State of Louisiana, and the father of your oratrix, the said Myra, was at the time of making his last will hereinafter mentioned, and at his death, seized in his own right, amongst other property, of the following slaves, to wit: Solomon, aged 40 years; Randolph, 30 years; Jacob, 15 years; Jacques, 18 years; Paul, 22 years; Ned, 30 years; Isaac, 20 years; Austin, 25 years; Jain, 16 years; Charles, 35 years; Jacques, mulatto, 30 years, Cardinal, 25 years; Jeremie, 35 years; Davis, 20 years; Brice, 40 years; Tom, 35 years;

Rob, 26 years; Haley, 30 years; Harry, 15 years; Coxe, 40 years; Sam, 40 years; Janvier, 40 years; Rose, 25 years; Peter, 45 years; Chloe, 30 years; Lucy Morrow, 35 years; George, 10 years; Sam, 40 years; Grace, 10 years; Eliza, 10 years; Spencer, 44 years; Themar, 25 years; Dorianna Smith, 16 years; Little Winny, 20 years; Judith, 25 years; Retty, 26 years; George, mulatto, 30 years; Daice or Dive, 5 years; Ben, 26 years; Jack, 25 years; Mary, 30 years; Joe, 15 years; Sucky, 12 years; Victoria, 10 years; Joe, 16 years; Davis, 30 years; Andre, 40 years; Squire, child; Tom, child; Davis, child; Clome, child; Gabriel, child; George, 10 years; John Harrod, 25 years; Wallace, 30 years; also the following named slaves whose ages are unknown, to wit: Meroke, Phœbe, Filibo Thorn, Turkey John, Jambon, Farnny, Wallace, Leven, John, Winy, Esther, James McCall, Hannah, Phil, Patsey, Morison, Esther, Morning, Cambridge, Rachel; also certain other slaves, twenty-two in number, to wit: Rob, George, Gurge, Charles, Cardinal, Cloe, Davis, Jacques, Lucy, Morrow, Mary, Solomon, Paid, Peter, Wallace, Rose and child, Tom, Rachel, Jack, Strover, Austin, Ren, George.

And that the said Daniel Clark, at the time of making his last will hereinafter mentioned, and at his death, was entitled, (amongst other property,) to certain property, debts, and demands, which are enumerated in a schedule of debts and property made and filed by Richard Relf and Beverly Chew, in the probate court for the parish and city of New Orleans, on the 3d day of March, 1814, the whole amount of the said schedule of debts and property being, as nearly as your oratrix had been able to calculate the same, three hundred and twenty-three thousand one hundred and eighty-eight dollars and four cents, independently and exclusively of certain real estate belonging to the said Daniel Clark, specified and set down in said schedule at the value of three hundred and forty-four thousand dollars; and it is expressly charged that all or nearly all of the said amount of three hundred and twenty-three thousand one hundred and twenty-eight dollars and four cents, was belonging to and the property of the said Daniel Clark at the time of his, the said Daniel Clark's, death.

And it is expressly charged that previous to the death of the said Daniel Clark, it had long been the intention and earnest desire of the said Daniel Clark, the father of your oratrix, to leave at his death all his property and estate, real and personal, to your oratrix, the said Myra Clark; that in order more effectually to secure the fulfilment of said intention and desire the said Daniel Clark did, in or about the month of July, in the year 1813, duly make and execute his last will and testament, according to law, having wholly written and signed the same with his own hand, and did in and by the said will declare your oratrix, the said Myra Clark, to be his legitimate child; and the said Daniel Clark did also, in and by his said last will, devise and bequeath to your oratrix, the said Myra Clark, all his, the said Daniel Clark's, property and estate, real and personal, and did name therein, as the executors of the said will, Colonel Joseph Deville Degoutin Belle-

chasse, James Pitot, and Chevalier Dusuau de la Croiz, appointing the said Chevalier de la Croix tutor also of your oratrix, the said Myra Clark, your oratrix being then an infant under the age of twenty-one years, to wit, of the age of seven years. And that the said will did also contain some bequests to friends, amongst which bequests were a legacy or annuity of two thousand dollars per annum, to be paid to Mary Clark, the mother of the said Daniel Clark, during her lifetime; an annuity of five hundred dollars, to be paid yearly, to one Caroline De Grange, until the said Caroline should have attained her majority, when the annuity should cease, and the sum of dollars should be paid her; and also a bequest of thousand dollars to be paid to the son of the said Judge James Pitot; and the said will further contained specific and detailed instructions respecting the education of your oratrix, the said Myra, and the management of the estate and property of the said Daniel Clark during the infancy of your oratrix; and it is expressly charged that the said will was wholly written and signed with the proper hand of the said Daniel Clark; that the said will was shown by the said Daniel Clark to, and its contents read by, the said Judge James Pitot, the late John Lynd, notary public in and for the parish and city of New Orleans, Mrs. Harriet Smith, and others; and that the said will was also shown and its contents communicated by the said Daniel Clark to the said Colonel Bellechasse, Chevalier De la Criox, Mr. Pierre Baron Boisfontaine, and others; and that the said Daniel Clark departed this life on or about the 16th day of August, in the year 1813, without altering or revoking his said will, and leaving your oratrix, the said Myra Clark, his only child or descendant, and the forced or instituted heiress of all his property and estates, real and personal; and it is expressly charged that the said Daniel Clark left at his decease no child or descendant him surviving except your oratrix, the said Myra Clark; and that your oratrix, the said Myra Clark, was the lawful and legitimate child or descendant of the said Daniel Clark, and entitled as such by the law of the land to the possession and inheritance of all the property and estate of the said Daniel Clark, and especially to the property, and estate, and slaves, hereinbefore enumerated and described. And it is especially charged that your oratrix, the said Myra Clark, soon after her birth, which took place in the month of July, 1806, was placed by her father, the said Daniel Clark, in the family of Samuel B. Davis, with whom she continued to live at New Orleans until the year 1812, when the said Samuel B. Davis removed to live in the city of Philadelphia, in the State of Pennsylvania; that your oratrix, the said Myra, accompanied the family of the said Samuel B. Davis to Philadelphia, and remained in his, the said Samuel B. Davis's, family, until the time of the death of the said Daniel Clark and afterwards; and that during the lifetime of the said Daniel Clark he, the said Daniel Clark, continued to exercise the authority, care, and protection of a parent in regard to your oratrix, the said Myra Clark.

And that in or about the month of May, in the year 1811, the said

Rob, 26 years; Haley, 30 years; Harry, 15 years; Coxe, 40 years; Sam, 40 years; Janvier, 40 years; Rose, 25 years; Peter, 45 years; Chloe, 30 years; Lucy Morrow, 35 years; George, 10 years; Sam, 40 years; Grace, 10 years; Eliza, 10 years; Spencer, 44 years; Themar, 25 years; Dorianna Smith, 16 years; Little Winny, 20 years; Judith, 25 years; Retty, 26 years; George, mulatto, 30 years; Daice or Dive, 5 years; Ben, 26 years; Jack, 25 years; Mary, 30 years; Joe, 15 years; Sucky, 12 years; Victoria, 10 years; Joe, 16 years; Davis, 30 years; Andre, 40 years; Squire, child; Tom, child; Davis, child; Clome, child; Gabriel, child; George, 10 years; John Harrod, 25 years; Wallace, 30 years; also the following named slaves whose ages are unknown, to wit: Meroke, Phœbe, Filibo Thorn, Turkey John, Jambon, Farnny, Wallace, Leven, John, Winy, Esther, James McCall, Hannah, Phil, Patsey, Morison, Esther, Morning, Cambridge, Rachel; also certain other slaves, twenty-two in number, to wit: Rob, George, Gurge, Charles, Cardinal, Cloe, Davis, Jacques, Lucy, Morrow, Mary, Solomon, Paid, Peter, Wallace, Rose and child, Tom, Rachel, Jack, Strover, Austin, Ren, George.

And that the said Daniel Clark, at the time of making his last will hereinafter mentioned, and at his death, was entitled, (amongst other property,) to certain property, debts, and demands, which are enumerated in a schedule of debts and property made and filed by Richard Relf and Beverly Chew, in the probate court for the parish and city of New Orleans, on the 3d day of March, 1814, the whole amount of the said schedule of debts and property being, as nearly as your oratrix had been able to calculate the same, three hundred and twenty-three thousand one hundred and eighty-eight dollars and four cents, independently and exclusively of certain real estate belonging to the said Daniel Clark, specified and set down in said schedule at the value of three hundred and forty-four thousand dollars; and it is expressly charged that all or nearly all of the said amount of three hundred and twenty-three thousand one hundred and twenty-eight dollars and four cents, was belonging to and the property of the said Daniel Clark at the time of his, the said Daniel Clark's, death.

And it is expressly charged that previous to the death of the said Daniel Clark, it had long been the intention and earnest desire of the said Daniel Clark, the father of your oratrix, to leave at his death all his property and estate, real and personal, to your oratrix, the said Myra Clark; that in order more effectually to secure the fulfilment of said intention and desire the said Daniel Clark did, in or about the month of July, in the year 1813, duly make and execute his last will and testament, according to law, having wholly written and signed the same with his own hand, and did in and by the said will declare your oratrix, the said Myra Clark, to be his legitimate child; and the said Daniel Clark did also, in and by his said last will, devise and bequeath to your oratrix, the said Myra Clark, all his, the said Daniel Clark's, property and estate, real and personal, and did name therein, as the executors of the said will, Colonel Joseph Deville Degoutin Belle-

chasse, James Pitot, and Chevalier Dusuau de la Croiz, appointing the said Chevalier de la Croix tutor also of your oratrix, the said Myra Clark, your oratrix being then an infant under the age of twenty-one years, to wit, of the age of seven years. And that the said will did also contain some bequests to friends, amongst which bequests were a legacy or annuity of two thousand dollars per annum, to be paid to Mary Clark, the mother of the said Daniel Clark, during her lifetime; an annuity of five hundred dollars, to be paid yearly, to one Caroline De Grange, until the said Caroline should have attained her majority, when the annuity should cease, and the sum of dollars should be paid her; and also a bequest of thousand dollars to be paid to the son of the said Judge James Pitot; and the said will further contained specific and detailed instructions respecting the education of your oratrix, the said Myra, and the management of the estate and property of the said Daniel Clark during the infancy of your oratrix; and it is expressly charged that the said will was wholly written and signed with the proper hand of the said Daniel Clark; that the said will was shown by the said Daniel Clark to, and its contents read by, the said Judge James Pitot, the late John Lynd, notary public in and for the parish and city of New Orleans, Mrs. Harriet Smith, and others; and that the said will was also shown and its contents communicated by the said Daniel Clark to the said Colonel Bellechasse, Chevalier De la Criox, Mr. Pierre Baron Boisfontaine, and others; and that the said Daniel Clark departed this life on or about the 16th day of August, in the year 1813, without altering or revoking his said will, and leaving your oratrix, the said Myra Clark, his only child or descendant, and the forced or instituted heiress of all his property and estates, real and personal; and it is expressly charged that the said Daniel Clark left at his decease no child or descendant him surviving except your oratrix, the said Myra Clark; and that your oratrix, the said Myra Clark, was the lawful and legitimate child or descendant of the said Daniel Clark, and entitled as such by the law of the land to the possession and inheritance of all the property and estate of the said Daniel Clark, and especially to the property, and estate, and slaves, hereinbefore enumerated and described. And it is especially charged that your oratrix, the said Myra Clark, soon after her birth, which took place in the month of July, 1806, was placed by her father, the said Daniel Clark, in the family of Samuel B. Davis, with whom she continued to live at New Orleans until the year 1812, when the said Samuel B. Davis removed to live in the city of Philadelphia, in the State of Pennsylvania; that your oratrix, the said Myra, accompanied the family of the said Samuel B. Davis to Philadelphia, and remained in his, the said Samuel B. Davis's, family, until the time of the death of the said Daniel Clark and afterwards; and that during the lifetime of the said Daniel Clark he, the said Daniel Clark, continued to exercise the authority, care, and protection of a parent in regard to your oratrix, the said Myra Clark.

And that in or about the month of May, in the year 1811, the said

Daniel Clark was led to believe that one Daniel W. Coxe, of Philadelphia, with whom he had previously had some connexion in business, had by imprudence or misconduct involved him, the said Daniel Clark, in some serious pecuniary and commercial difficulties and embarrassments; that immediately thereupon the said Daniel Clark deemed it advisable to proceed forthwith to Philadelphia, in order to attend personally to the settlement of the difficulties which it was represented to him existed; that preparatory to his undertaking the voyage from New Orleans to Philadelphia for the purposes aforesaid, and in or about the month of May, 1811, he, the said Daniel Clark, conveyed property to Samuel B. Davis and others to the amount of several hundred thousand dollars, to be held in trust by them for your oratrix, and then at or about the said time there made a will devising, briefly and in general terms, his property to his mother, Mary Clark, then residing out of the State of Louisiana, and also appointing Richard Relf and Beverly Chew, two of the defendants herein, the executors thereof. And that the said Daniel Clark, in or about the said month of July, 1811, proceeded to Philadelphia and returned again in a few months thereafter, and in the same year to New Orleans; that the said Daniel Clark had ascertained at Philadelphia, upon his proceeding thither as aforesaid, that his interests had not been so seriously jeopardized by the said Daniel W. Coxe as he had been led to believe as above stated, previous to his having gone there; that he did, therefore, upon his said return to New Orleans, receive back some portions of the property whicd he had conveyed as aforesaid in trust for your oratrix, the said Myra Clark, under the above mentioned erroneous belief respecting the supposed difficulties in which the said Coxe was alleged to have involved him; and that upon his said return to New Orleans, and upon his having ascertained as aforesaid the groundlessness of the apprehension which had been excited in his mind relative to the consequences that might result to himself from the transactions of the said Daniel W. Coxe, he, the said Daniel Clark, did also declare that he no longer intended that the said will made in 1811 should be his last will; that he had made it while laboring under false impressions, and only provisionally, and that he should revoke the said will of 1811, and make and execute another will, devising and bequeathing all his estate, real and personal, to your oratrix, the said Myra Clark; and it is expressly charged that the said Daniel Clark did revoke the said will made in 1811, as aforesaid, and did, after the making and execution of the said will of 1811, duly make and execute, in the year 1813, and but a short time before his death, as your oratrix has hereinbefore set forth, his, the said Daniel Clark's, last will and testament, devising and bequeathing thereby to your oratrix, the said Myra Clark, all of the real and personal estate of him, the said Daniel Clark, and declaring your oratrix, the said Myra, to be the legitimate child of him, the said Daniel Clark, as your oratrix has hereinbefore more particularly stated; and that the said Daniel Clark did upon his death-bed, and unto the very moment of his decease, continue to declare that the aforesaid will

made by him in the year 1813, devising all his property as aforesaid to your oratrix, the said Myra, was his last will and testament, and was then contained in a black case in his office room in the house in which he was at the time, and in which he died almost at the time of making the said declarations in favor of your oratrix, the said Myra.

And that the said Daniel Clark, upon making the said will of 1811, delivered it to the said Richard Relf and Beverly Chew, or one of them, and allowed it to remain in their keeping from thenceforth; that the said Daniel Clark was extensively engaged in mercantile and other business and speculations, and possessed a vast amount of property, and that the said Richard Relf acted as his agent in relation to many of the transactions and affairs in which he, the said Daniel Clark, was engaged; that at and immediately before the time of the death of the said Daniel Clark, the said Richard Relf assumed to direct the domestic arrangements of the said Daniel Clark, and attended him during his last illness at his, the said Daniel Clark's, dwelling-house, and took upon himself the sole control of the household and the affairs of the said Daniel Clark; and that instantly upon the death of the said Daniel Clark, all the books, papers, letters, documents, and all deeds and writings, of what nature soever, belonging to the said Daniel Clark, came into the sole possession of him, the said Richard Relf.

And it is expressly charged, that the said will of 1813, made by the said Daniel Clark in favor of the said Myra, came into the possession of the said Richard Relf immediately upon the death of the said Daniel Clark, and that the said Richard Relf fraudulently concealed, suppressed, or destroyed the same, and did substitute in its place or stead the said old revoked will of 1811, in which he, the said Richard Relf, was named an executor, and that the said last will of 1813 was never seen by any one after the death of the said Daniel Clark, except by the said Richard Relf and Beverly Chew, and their confederates.

And it is expressly charged, that the said Richard Relf did fraudulently cause the said old revoked will, made in 1811, to be admitted to probate in the probate court for the parish and city of New Orleans, and procured himself, the said Richard Relf, to be sworn and authorized by the said probate court as the testamentary executor of the said Daniel Clark.

And that the said Beverly Chew did also, soon after the death of the said Daniel Clark, to wit, in the month of January, 1814, procure himself to be sworn and authorized by the said court of probates for the parish and city of New Orleans, to act as testamentary executor of the said Daniel Clark under the said revoked will of 1811; and that when the said Richard Relf and Beverly Chew took upon themselves the office of testamentary executors of the said Daniel Clark, as aforesaid, there was no relative, or any person claiming to be heir of the said Daniel Clark, in the State of Louisiana; that your oratrix was then an infant, under the age of seven years, and resided at that time in the city of Philadelphia, in the State of Pennsylvania, with the family of the said Samuel B. Davis; and that Mary Clark, the mother of the said

Daniel Clark, who was named, as aforesaid, devisee of the said Daniel Clark in the said old revoked will of 1811, was also then a resident of the State of Pennsylvania, and continued to reside there until her death, which happened some years after the death of the said Daniel Clark. That the said Daniel Clark was a native of Ireland, from which country he emigrated to Louisiana, as your oratrix had been informed and verily believed, in or about the year 17 , and that all his immediate relatives and family resided, at the time of his death, either in Ireland or in the State of Pennsylvania, and that none of them ever visited Louisiana until many years after his death; that the said Richard Relf and Beverly Chew fraudulently possessed themselves, immediately after the death of the said Daniel Clark, of the personal estate, effects, and credits of the said Daniel Clark to a great amount, and also entered into possession of the real estates of the said Daniel Clark, and into the receipts of the rents and profits thereof, by falsely and fraudulently representing the said estate to be insolvent; and by other fraudulent means continued, and were enabled to continue, and had ever since continued, and then were, in such possession, or in possession of a large portion thereof; and that the said Richard Relf and Beverly Chew made sales of the property and effects, real and personal, of the said Daniel Clark, and had received large sums of money, amounting to several hundreds of thousands of dollars from the said estate, real and personal, and had retained in their hands, or otherwise appropriated or disposed of, the same for their own uses and purposes; and that in all such actings and doings, and in all the matters relating to the said estate, they, the said Richard Relf and Beverly Chew, had acted fraudulently, and without the knowledge, consent, or approbation of your oratrix, or of any other person or persons having a right, or being duly and legally authorized, to sanction, consent to, or approve of the same.

And that from and after the time of the death of the said Daniel Clark, and until about the year 1832, when your oratrix, the said Myra Clark, became the wife of the said William Wallace Whitney, your oratrix, the said Myra, continued to reside in the family of the said Samuel B. Davis, who lived during all, or nearly all, that time in the State of Pennsylvania; and it is also expressly charged that during the lifetime of the said Daniel Clark, the father of your oratrix, the said Myra Clark, your oratrix was always known and called by her true and rightful name of Myra Clark, and by no other name; and that from and after the death of the said Daniel Clark, until at or about the time of the marriage of your oratrix, the said Myra, with the said William Wallace Whitney, your oratrix, the said Myra, was designated and called in the family of the said Samuel B. Davis, by the name of Myra Davis, and by no other name, and was kept in ignorance of her real name, parentage, and true history, and of her rights and her title to the inheritance and possession of the estate of the said Daniel Clark; and was consequently unable, during all that time, to take the necessary measures for asserting her title to the said inheritance of her father, the said Daniel Clark; that at or about the time of the

marriage of your oratrix, the said Myra, with the said William Wallace Whitney, your oratrix was brought by accident to the discovery of her true name and parentage, and was subsequently made more fully acquainted with the circumstances of her history and rights by the said Samuel B. Davis and others; and that your oratrix had, ever since the time of the said marriage of your oratrix, been and was then actively engaged in endeavors to establish the legal rights and claims of your oratrix, the said Myra, to the property and estate, real and personal, of the said Daniel Clark.

And that the said Mary Clark died in the year 18 , as your oratrix was informed and verily believed; and that, as your oratrix had been informed and verily believed, the next heirs and relatives left by this said Mary Clark surviving her at her decease, were, besides your oratrix, the said Myra, Eleanor O'Bearne, a daughter of the said Mary Clark, Jane Green, wife of George Green, and daugher of said Mary Clark, and Sarah Cambell, a grand-daughter of the said Mary Clark.

And it is expressly charged, that the said Richard Relf and Beverly Chew, or one of them, did also, immediately upon the death of the said Daniel Clark, possess themselves of all and every of the books and papers of the said Daniel Clark, and of the title deeds of his real estate and other estates.

And it is further expressly charged, that your oratrix, the said Myra Clark, was the only surviving child or descendant of the said Daniel Clark at the time of his death; and that your oratrix, the said Myra Clark, was, upon the death of the said Daniel Clark, entitled, as his forced heiress-at-law, and his universal heiress, by him instituted and appointed in his said last will made by him in 1813, to all the estate real and personal of the said Daniel Clark; and it is also expressly charged that, inasmuch as your oratrix, the said Myra, was the only surviving child or legitimate descendant of the said Daniel Clark, at the time of his, the said Daniel Clark's, death; and inasmuch as the said last will of the said Daniel Clark, made by him as aforesaid in 1813, was fraudulently concealed, suppressed, or destroyed by the said Richard Relf, as above stated; and also inasmuch as the said old revoked will of 1811, alleged to have been made by the said Daniel Clark in favor of his mother, the said Mary Clark, was produced and procured to be admitted to probate, as the last will of the said Daniel Clark, by such fraud and practice of the said Richard Relf as in hereinbefore stated, that for notwithstanding the same, the said real and personal estate of the said Daniel Clark, hereinbefore described and enumerated, and all other estates, real and personal, moveable and immoveable, of the said Daniel Clark, descended to and became vested in your oratrix, the said Myra Clark, as the forced heiress-at-law and universal devisee of the said Daniel Clark.

And that the said Eleanor O'Bearne, Jane Green, and her husband, George Green, Sarah Cambell, Richard Relf, Beverly Chew, and François Dusuau de la Croix, had been required respectively to surrender and deliver up to your oratrix, the said Myra Clark, the posses-

sion of such portion of the personal estate and slaves owned by the said Daniel Clark at the time of his decease, as was by them, or each of them, respectively held, occupied, possessed or claimed, as owner or otherwise, together with all the title deeds, vouchers, and documents relating to the same, or any part thereof, and severally to come to a just and true account with your oratrix for the rents, profits, issues, and services thereof respectively, which had been received or enjoyed by them, or either of them, at any time since the death of the said Daniel Clark; with which just and reasonable requests your oratrix had well hoped the said defendants would have respectively complied, as in justice and equity they ought to have done.

And that the said Eleanor O'Bearn, George Green and Jane Green, his wife, Sarah Cambell, Richard Relf, Beverly Chew, and Francis Dusuau de la Croix, and their confederates, sometimes gave out and pretended that the said Daniel Clark never did make and execute the said will of 1813 in favor of your oratrix, as has been above stated, and that the said old will of 1811 was duly made and executed by the said Daniel Clark, and was left by him at the time of his decease unrevoked, and as his true and only last will and testament; whereas it is expressly charged the contrary of said pretence was true, and that the said Daniel Clark did make and execute the said will, made by him as hereinbefore stated in the year 1813, in favor of your oratrix, the said Myra Clark; and did also therein and thereby devise and bequeath all his estate, real and personal, to your oratrix, the said Myra Clark; and did also therein and thereby declare your oratrix, the said Myra Clark, to be the legitimate daughter of the said Daniel Clark; and did make and order therein the other dispositions and bequests hereinbefore stated by your oratrix to have been made and ordered by him in the said will, made and executed as aforesaid in 1813, by him, the said Daniel Clark, and the said will of 1813 operated as a full and perfect revocation of the former will alleged to have been made by the said Daniel Clark in 1811, and of every other part and provision thereof; and that the said will of 1811 ought to be set aside, and the said will of 1813 established and confirmed, and the real and personal estate of the said Daniel Clark declared to be descended to your oratrix, the said Myra Clark, as the heir at law and devisee of the said Daniel Clark. And at other times the said confederates would allege that some doubts had arisen concerning the legitimacy of your oratrix, the said Myra Clark, and pretend that the said Daniel Clark was never married to Zuline née Carriere, by whom he had your oratrix, the said Myra Clark, and that the said Zuline née Carriere, was the lawful wife of one Jerome de Grange, who was still living when she became the mother of your oratrix by the said Daniel Clark; and that therefore, upon the death of the said Daniel Clark, the equitable and legal interest in all the said real and personal estate and slaves descended to and became vested in the said Mary Clark as his forced heir at law; whereas it is expressly charged the contrary of all such pretences and allegations was true, and that your oratrix, the said Myra Clark, was the legiti-

mate child of the said Daniel Clark, and that the said Daniel Clark was married to and was the lawful husband of the said Zuline née Carriere, at and before the time when she became the mother of your oratrix, the said Myra, by the said Daniel Clark, and that the said Zuline née Carriere was not, and never had been, at any time, the lawful wife of the said Jerome de Grange, or of any other man than the said Daniel Clark, when she became the mother of your oratrix, the said Myra as aforesaid; and that if any marriage ever did take place between the said Zuline and the said De Grange, the same was utterly null and void from the beginning, on the ground that the said Jerome de Grange, at the time of his contracting such marriage (if he did contract the same) with the said Zuline, was the lawful wedded husband of another woman, to whom he had been previously married, and who was still living, all of which the said confederates would at other times admit; but then they pretended that the said Richard Relf and Beverly Chew made sales of the said real and personal estate, and the said slaves of the said Daniel Clark, as testamentary executors of a will of the said Daniel Clark which had been admitted to probate in the probate court for the parish and city of New Orleans, and as the attorneys in fact of the said Mary Clark, the devisee in said probated will named; and that the purchasers of the said real and personal estate of the said Daniel Clark, at the said sales thereof, did become such purchasers for full and valuable considerations, and without notice of any revocation and invalidity of the said probated will, alleged to have been made by the said Daniel Clark in 1811, and in which the said Richard Relf and Beverly Chew were named executors, and without notice of the rights or claims of any other person than the said Mary Clark to the said estate of the said Daniel Clark, or any part thereof; and therefore they insisted, that although the said will of 1811 might not have been the last will of the said Daniel Clark, and although your oratrix, the said Myra, might have been the true and lawful heiress of the said Daniel Clark, yet they should not be affected thereby, and that the titles acquired by the said purchasers, under the said sales made of the real and personal estate and slaves of the said Daniel Clark, by the said Richard Relf and Beverly Chew, were good and perfect titles, and could not be invalidated or disturbed in any manner by the revocation or invalidity of the said will of 1811, or of any claim or claims, or title which your oratrix, the said Myra, might have had, or then had, to the said estate and slaves, or any portion thereof; whereas it is expressly charged the contrary of all such pretensions was true, and that the said Richard Relf and Beverly Chew, did not, nor did either of them, act in their said assumed capacities of pretended executors of a will of the said Daniel Clark, and attorneys of the said Mary Clark, legally; nor did they or either of them, when acting in both or either of such assumed capacities, observe or comply with the formalities, or adopt the measures, prescribed by law, as requisite to give any validity or authority to any act or acts done or assumed to be done by them in such assumed capacities of executors or attor-

neys, in relation to the said personal estate and slaves of the said Daniel Clark; that a true and faithful inventory, and a just appraisement by law, duly appointed and sworn appraisers of the said real and personal estate of the said Daniel Clark, had not been made or caused to be made according to law, by the said Richard Relf and Beverly Chew, or either of them, before the said sales were made; that proper and legal orders to sell were not obtained by the said Richard Relf and Beverly Chew, or either of them, from the judge authorized to grant or make such orders, before the said sales were made; that all or nearly all the said sales were made by private contract, and not at public auction, as they should according to law have been made; and that the moneys severally paid by the said purchasers, for the portions sold to them respectively, of the said real and personal estate and slaves, by the said Richard Relf and Beverly Chew, or either of them, were not respectively full and valuable considerations for said portions of said real and personal estate and slaves; that many of *of* said sales were made by the said Richard Relf and Beverly Chew, as pretended testamentary executors after the year of testamentary execution had expired, and when they had not, nor had either of them, been continued by the order of any judge or court of competent authority in their said functions of executors; that the said Richard Relf and Beverly Chew, had not, nor had either of them, caused themselves, or either of them, to be duly recognised by a court of competent authority, as the attorney or attorneys of the said Mary Clark; and that all acts of the said Richard Relf and Beverly Chew, in relation to the estate of the said Daniel Clark, were upon the face of the proceedings in the foregoing, and in many other respects, illegal and informal, and fraudulent and void, by the laws of the land, and so they were necessarily known to be by the said purchasers at the said sales; and that the making, execution, and existence of the said last will of the said Daniel Clark, made by him in 1813, and its fraudulent concealment, suppression, and destruction at his death, by the said Richard Relf, were notoriously known and reported at the time in Louisiana; and that the said purchasers, on the occasion of the making of the sales aforesaid, and afterwards, and their heirs and assigns, had some knowledge, notice, information, belief, or suspicion, or reason for belief or suspicion, and did in their consciences believe or suspect, that the said Richard Relf and Beverly Chew had acted fraudulently, improperly, and against equity and good conscience, in procuring to be admitted to probate the said will alleged to have been made by the said Daniel Clark in 1811, and in having procured the appointment of themselves, the said Richard Relf and Beverly Chew, by the probate court, as executors of the said will of 1811, and representing the said real and personal estate of the said Daniel Clark to have been devised to and inherited by the said Mary Clark; all which the said confederates would at times admit; and then they would pretend that they had delivered or sent to your oratrix full, true, and just accounts of the said real and personal estate; and slaves of the said Daniel Clark, and all of the rents, profits, issues, and ser-

vices thereof, and of all the business or concerns appertaining or relating thereto; whereas it is expressly charged the contrary of such pretence was true, and that the said confederates had not, nor had either of them, delivered or sent to your oratrix any account whatever; all of which actings, and doings, and pretences tended to the manifest wrong and injury of your oratrix, and were contrary to equity and good conscience. And it is expressly charged, that the said Eleanor O'Bearne, George Green and Jane Green, his wife, Sarah Cambell, Richard Relf, Beverly Chew, and Francis Dusuau de la Croix, and the rest of the confederates, might, without oath, full, true, direct, and perfect answer make, your oratrix thereby expressly waiving the necessity of making such answer upon the oath of the confederates, or of either of them, to all and singular the matters and things thereinbefore stated and charged, as fully and particularly as if the same were thereinafter repeated, and they, and each of them, thereunto distinctly and specifically interrogated; and that not only as to the best of their, and each of their, respective knowledge and remembrance, but also as to the best of their respective information, hearsay, and belief; and that the said confederates might also severally set forth what right, title, or interest they respectively had or claimed in or to the real estate and slaves of the said Daniel Clark, or any and what part thereof, and how and in what manner they derived and made out the same, and by and under what deed or deeds, writing or writings, and might set forth the date and contents of all such deeds and writings. And that the said Eleanor O'Bearne, George Green and Jane Green, his wife, Sarah Cambell, Richard Relf, Beverly Chew, and Francis Dusuau de la Croix, and the rest of the confederates, might answer the premises; and that the said will, made by the said Daniel Clark in the year 1813, in which he devised all his estate as aforesaid to your oratrix, the said Myra Clark, and the provisions and dispositions thereof be carried into execution by and under the decree of this honorable court, and the rights and interests of your oratrix under the same be declared and secured; and that it might be declared that the said will alleged to have been made by the said Daniel Clark in 1811, had been utterly revoked and declared to be good for nought by him, the said Daniel Clark, in his lifetime; and that the said will, so alleged to have been made by the said Daniel Clark in 1811, was in fact and in truth utterly void and of no effect; and that the said will, made as aforesaid by the said Daniel Clark in 1813, was duly made and executed by him, the said Daniel Clark, with all the formalities and other requisites necessary for passing real and personal estate by devise, and that it was the only true and valid will of the said Daniel Clark, and contained a good and valid devise and bequest of all the real and personal estate and slaves of the said Daniel Clark to your oratrix, the said Myra Clark; and that in and by the same he, the said Daniel Clark, did acknowledge and declare your oratrix, the said Myra Clark, to be the legitimate daughter of him, the said Daniel Clark; and that the said Daniel Clark departed this life on or about the 16th

day of August, 1813, without altering or revoking his said will so made by him aforesaid in the year 1813, and containing the said devise to, and the said declaration of acknowledgment of the legitimacy of, your oratrix, the said Myra, made as aforesaid by the said Daniel Clark in his said last will made by him in the year 1813, was a full and perfect and effectual act of legitimation of your oratrix, the said Myra Clark, if any such act would have been necessary to establish the legitimacy of your oratrix, the said Myra; and that it vested in your oratrix all the rights, capacities, and privileges of a legitimate child; and also that it might be declared that your oratrix, the said Myra, was the legitimate child of the said Daniel Clark, and that the said Daniel Clark was the lawful husband of the said Zuline née Carriere, the mother of your oratrix, the said Myra, at and before the time when she, the said Zuline, became the mother of your oratrix, the said Myra, by the said Daniel Clark; and that it might be declared that all and every of the said sales of the said real and personal estate and the said slaves of the said Daniel Clark, made by the said Richard Relf and Beverly Chew, or by either of them, as the executor or executors of the said revoked will of 1811, or as the attorney or attorneys of the said Mary Clark, or in any other capacity, were null and void and of no effect; and that the said real and personal estate and slaves of the said Daniel Clark descended to your oratrix, the said Myra, upon the death of the said Daniel Clark, as his, the said Daniel Clark's, devisee and heir-at-law; and that the said Eleanor O'Bearne, George Green and Jane Green, his wife, Sarah Cambell, Richard Relf, Beverly Chew, Francis Dusuau de la Croix, and the other defendants, might be decreed to give up to your oratrix the possession of all the said real estate and slaves thereinbefore enumerated and described, and then held and possessed, or claimed to be held and possessed, by them, or either of them, jointly or severally, or in any other manner, as owners or otherwise; and to come severally to an account with your oratrix for the rents, profits, issues, and services of the said real estate and slaves of the said Daniel Clark, which had been possessed or received by the said defendants, or any of them, or by any person or persons by their or either of their order, or for their or either of their use, since the death of the said Daniel Clark; and respectively to pay over to your oratrix whatever should be found due from them, or any of them, upon the taking of such account; and that in the taking of such accounts the said defendants might respectively be charged with interest for such balance as should appear to have been in their hands from time to time; and that the said defendants might be respectively decreed to deliver up to your oratrix all deeds and other writings in their hands relating to the said real and personal estate and slaves of the said Daniel Clark; and that the said Richard Relf and Beverly Chew, and the rest of the confederates, might be respectively decreed to pay to your oratrix what should be found due from them, or any of them, on account of the said personal estate and effects of the said Daniel Clark; and that your oratrix might have such further or

other relief in the premises as the nature of the case might require, and as might seem meet to this honorable court, and agreeable to equity and good conscience.

And your orator and oratrix further show unto your honors, that on the 12th day of December, 1837, in this honorable court, the death of the said William Wallace Whitney, the then husband of your oratrix, having been suggested to the court, it was ordered that this suit be continued in the name of your oratrix. And that on the 24th day of May, 1839, it was shown to this honorable court, by way of supplement to said bill that, your oratrix and orator having become united by the bonds of matrimony, it was ordered that this suit stand and be proceeded in in the names of your orator and oratrix. And your orator and oratrix further show, that the said defendants, Richard Relf, Beverly Chew, and several other defendants in said original bill, being duly served with process, appeared to the said bill of your orator and oratrix, and filed demurrers thereto, which said demurrers were argued on appeal in the Supreme Court of the United States, and were overruled in said court, and defendants were required to answer to said bill of complaint.

And that said court directed the said bill of complaint to be amended in two points, which were made by said demurrers, that is to say, the said Relf and Chew should not be called upon to account in and by said bill; and that in the aspect in which your oratrix was presented to said court in said bill, as the universal instituted heir of said Daniel Clark, under the will of 1813, as aforesaid, she could not make the said Caroline Barnes and her husband parties to said bill as defendants, she, the said Caroline, being a legatee in said will of 1813. That, in these two points, the then solicitors of your orator and oratrix attempted to amend the said bill; but your orator and oratrix charge, that the paper filed by their then counsel in 1844 did not accomplish the purpose designed by such an amendment. That afterwards, the said Relf and Chew, and Caroline Barnes and others, filed answers to said bill, as intended to have been amended, in which they insisted, for their defence in part, upon the matters which should have been avoided by said amendment. And your orator and oratrix further show unto your honors, that the said defendant, François Dusuau de la Croix, appeared to said bill by P. A. Rost, solicitor and counsellor in this honorable court. And your orator and oratrix further show unto your honors, by way of amendment to said bill, that they will renounce, for all the purposes of this suit against the defendants herein named, all claim which your oratrix has heretofore made to the estate of said Daniel Clark, as his instituted and universal heir and devisee by the said will of 1813; and that she will, as against the defendants herein named, assert and maintain her right, title, and equity to the four-fifth parts of the property and rights embraced in this amended bill and supplement, as the forced heir of said Daniel Clark, deceased, within and according to the tenor and effect, meaning and intent, of the law of the State of Louisiana, in such case made and provided, in force at the time of the

death of said Daniel Clark. But your orator and oratrix expressly charge, that they shall at all times insist upon the fact, that said will of 1813, as stated in said original bill, was made by said Daniel Clark, and was suppressed or destroyed as also therein stated; so far as any thing was in said will contained declaring the legitimacy of your oratrix as the only child of the said Daniel Clark, born in wedlock with said Zuline née Carriere, and no further or otherwise; your orator and oratrix being willing and content, that the said defendants in this amended bill and supplement, as regards the property herein described, should enjoy according to their respective rights, the other one-fifth or disposable portion of the estate of said Daniel Clark herein embraced; and your orator and oratrix further show, and charge, that all the matters herein stated to be contained in the said original bill of complaint are true, and will be herein and hereby maintained, except so far as the renunciation by your oratrix of her assured rights, as instituted heiress, as the preceding paragraph, by way of amendment; and your orator and oratrix further show unto your honors, by way of supplement, that the said original bill of complaint was brought to a hearing upon the matters therein contained, and which matters are substantially herein recited and insisted upon, and upon the answer of Charles Patterson, one of the defendants therein, in this honorable court and decree therein rendered, on the twenty-fifth day of April, 1840, in favor of the claims and pretensions of your oratrix, in the words following, to wit:

"This cause, having come for final hearing by consent of the complainants and the defendant, Patterson, upon the bill, answer, replication, exhibits, depositions, and documents on file herein, and on the admission of the parties that the estate in controversy in this case exceeds in value the sum of two thousand dollars; and the said complainants and the defendant, Patterson, expressly waiving and dispensing with the necessity of any other parties to the hearing or decision of this cause than themselves, and agreeing that the cause shall be determined alone upon its merits; and the court being now sufficiently advised of and concerning the premises, does finally decree and order, that the defendant, Patterson, do, on or before the first day of the next term of this court, convey and surrender possession to the complainant, Myra Clark Gaines, all those lots or parcels of land lying and being in the city of New Orleans, and particularly described in this answer and exhibits, and to which he claims title, under the said will of 1811; said conveyance shall contain stipulations of warranty against himself only, and those claiming under him. It is further decreed and ordered, that the defendant pay the complainants so much of their costs, expended herein, as has been incurred by reason of his being made a defendant in this cause.

From which decree the defendants prayed an appeal to the Supreme Court of the United States, which is granted. And your orator and oratrix further show unto your honors, that the said order and decree of this court was appealed from by the said Patterson to the Su-

preme Court of the United States; whereupon, after hearing upon said appeal, the said court, at the January term thereof, in the year 1848, made the following decree, to wit: We shall direct the decree of the court below to be reversed, and adjudge that a decree shall be made in the said court in this suit, declaring that a lawful marriage was contracted in Philadelphia, Pennsylvania, between Daniel Clark and Zuline Carriere; and that Myra Clark, now Myra Gaines, is the lawful and only child of that marriage; that the said Myra is the forced heir of her father, and is entitled to four-fifths of his estate after the excessive donation in the will of 1811 is reduced to the disposable quantum which the father could legally give to others;" that the property described in the answer of the defendant, Mr. Patterson, is a part of the estate of Daniel Clark at the time of his death; that it was illegally sold by those who had no right or authority to make a sale of it; that the titles given by them to the purchaser and by the purchaser to the defendant, Mr. Patterson, including those given by the buyer from the first purchaser to Mr. Patterson, are null and void; and that the same is liable, as a part of the estate of Daniel Clark, to the legitime of the forced heir; and that the defendant, Charles Patterson, shall surrender the same, as shall be directed among other things to be done in the premises, as will appear in the decree and mandate of this court to the circuit court of Louisiana. To which said decree your orator and oratrix pray leave to refer, and that the same may be made a part of this bill. And your orator and oratrix further show unto your honors, and charge that, by said order and decree, your oratrix is declared to be the legitimate child and heir of him, the said Daniel Clark, and as such is entitled to receive legally and equitably, as to the said Relf and Chew, and all persons holding under them, all and singular the estate or property and rights claimed herein and hereby; that, although the said Relf and Chew were neither of them nominal parties to said decree, yet they and each of them, as well as the said defendant, François Dusuau de la Croix, were, and each of them are, bound and concluded by said decree, they and each of them holding the same relation to your oratrix as the said Charles Patterson, and they and each of them having joined in the interrogatories propounded to the witnesses, upon whose testimony said decree was rendered, and propounded cross interrogatories to said witnesses, and each of them, as your orator and oratrix expressly charge. And your orator and oratrix, for greater certainty respecting the matters herein last above stated, pray leave to refer to the record and decree in this honorable court in the case of your orator and oratrix against Charles Patterson, and entitled on appeal in the Supreme Court aforesaid, Patterson against Gaines and wife, your orator and oratrix, and the decree of said court therein, and that said decrees and records be made a part of this amended bill and supplement. And your orator and oratrix further show unto your honors, that the said Caroline Barnes, during her lifetime, did sometimes give out and pretend that she, the said Caroline Barnes, was the illegitimate daughter of said Daniel Clark, begotten with the said Zuline, the mother of your oratrix, during the coverture

of the said Zuline with said Jerome de Grange; and that the said Caroline Barnes was afterwards made legitimate by the marriage of the said Daniel Clark with said Zuline at Philadelphia, as in this bill stated; and that, by said marriage, she, the said Caroline, became, and that her said heirs are now, entitled equally with your oratrix to the estate of the said Daniel Clark, deceased; all which pretences of the said Caroline Barnes, and of her heirs, your orator and oratrix charge to be without foundation in truth; on the contrary, they expressly charge the fact to be, that the said Caroline Barnes was the daughter of said Jerome de Grange, the offspring of his unlawful and void marriage with said Zuline. That your orator and oratrix are free to admit that the said Daniel Clark, after the marriage with said Zuline, finding the said Caroline without a paternal protector, did, from his ample means, provide in a generous and noble manner for the respectable support and education of the said Caroline during his life, and by a legacy to her after his death; and further, that, by reason of the infamy which attached to the name which she inherited, he, the said Daniel Clark, permitted her, the said Caroline, to bear, and be known by, his name, which was a sure guarantee to her of access to any society to which she might aspire.

And your orator and oratrix further show unto your honors, that the said Richard Relf and Beverly Chew sometimes give out and pretend that they are justly entitled, as partners in trade, or otherwise, with the said Daniel Clark during his lifetime, each of them to one equal one-third part of all and singular the estate, real and personal, which the said Clark left at his death, in his own name or otherwise, (with some small exceptions;) and, as a proof of such claims and pretensions, the said Richard Relf and Beverly Chew, and their confederates, pretend to have in their possession, or the possession of one of them, a certain instrument in writing, purporting to have been executed by said Relf, Chew, and Daniel Clark, some time in the year 1813, and within two months of the death of said Daniel Clark. But your orator and oratrix expressly charge the fact to be, that said pretensions of said Relf and Chew are wholly without foundation in truth; and your orator and oratrix have good reason to believe, and do believe, that said instrument in writing is fictitious, got up by some one unknown to your orator and oratrix, for the purpose of defeating the just claims of your oratrix in the premises. And your orator and oratrix further charge, that, if said instrument should be shown to this honorable court to be genuine, and to have been executed in all respects as it purports, the same is without legal or equitable force or effect, for reasons apparent upon the face thereof, and was at all times, and is, known by said Relf and Chew, and each of them, to have been and to be without such effect, as is clearly shown in all the transactions of said Relf and Chew, and each of them, by the fact that in no instance in their whole course of unlawful proceedings, in regard to the succession of said Daniel Clark, is the said instrument in writing alluded to; nor has any act of theirs in said regard indicated, in its details or results, the honest

confidence of said Relf and Chew, or either of them, in the legal or equitable effect of said instrument for any purpose for which it purports to have been designed; and for greater certainty as to the statements and charges of your orator and oratrix, with respect to the inherent defects and vices apparent upon said contract, they pray leave to refer to the same, should it be produced by said defendants, and attempted to be set up for any purpose in their defence hereto.

And your orator and oratrix further show unto your honors, by way of amendment to said original bill, and so charge the fact is, that the said Francis Dusuau de la Croix, defendant herein, became possessed of the fifty-five slaves first herein mentioned, by means of a fraudulent and simulated, unlawful and unauthorized, act made before Marc Lafitte, at that time a notary public, duly commissioned and sworn, in and for the city of New Orleans, executed by the said Richard Relf, pretending to act therein both as the testamentary executor of the said Daniel Clark, deceased, and as the attorney in fact of the said Mrs. Mary Clark, the instituted universal heir of said Daniel Clark by said will of 1811, of the one part, and the said De la Croix of the other part; which said act bears date of the eleventh day of December, 1813; a copy whereof is filed in this cause, and marked in schedule A, and which your orator and oratrix pray may be made a part of this their amended and supplemental bill. And your orator and oratrix charge, that said act is wholly void and of no effect, and conveyed no right, title, or equity whatsoever to the said De la Croix, in or to said slaves therein named, nor either of them; for this, amongst many other reasons, that the said Relf could not, by the law of the State of Louisiana in such case made and provided, at that period in full force, in his capacity as executor act with respect to the estate of his testator in any matter without the concurrence of his co-executor, whilst no cause is apparent for his so doing; and, furthermore, the said Relf was incompetent lawfully to act at the same time as executor and as the attorney in fact of the instituted heir; and further, the said sale being by private act instead of public auction, was unauthorized and unsanctioned by the then law, and is therefore wholly void.

And your orator and oratrix further show unto your honors, that the said De la Croix became possessed of the said twenty slaves, secondly herein named, by means of a like act as aforesaid, bearing date the sixth day of October, 1813, before Marc Lafitte aforesaid; an authentic copy of which act is filed in this cause, marked in schedule B, and which your orator and oratrix pray may be made a part of this their amended and supplemental bill. And your orator and oratrix charge the fact to be, that said act is simulated, fraudulent, unlawful, and wholly void, and gave to and vested in the said De la Croix no property, right, title, or equity whatsoever in or to the said slaves therein named, or either of them, for the reasons hereinbefore stated, and for matters apparent in said act. And your orator and oratrix further show unto your honors, that they are ignorant and unin-

formed of the means, or of the manner, through or by which he, the said De la Croix, became possessed of the said twenty-two slaves lastly herein named; but your orator and oratrix charge that, by whatsoever pretence or color of title the said De la Croix claims to have acquired property or rights in and to said slaves, such pretence is wholly without foundation in truth, or in law or equity; and such title is wholly void, and of no effect whatsoever against the rights of your oratrix in the premises. And your orator and oratrix further show unto your honors, and so charge the fact is, that the said Francis Dusuau de la Croix, at the time of the pretended purchase of the aforesaid slaves, well knew that the said Relf and Chew, nor either of them, had any right, power, or authority whatsoever to sell or dispose of the said slaves in the manner as aforesaid; and further, that the said Francis Dusuau de la Croix, at the time of the said purchase, well knew that your oratrix was the only child and heiress-at-law of the said Daniel Clark, deceased; and that, as such heiress, your oratrix was not represented in said transactions with said Relf, in respect to said slaves so pretended to have been purchased as aforesaid. And your orator and oratrix further charge, that the said Francis Dusuau de la Croix has had, from the date of the said pretended purchases as aforesaid, the full and entire use and enjoyment of said slaves, with their increase, and that he now possesses them, and all of them now living, and all and singular their increase; and that the present value of said slaves surviving, with the increase of all those so disposed of as herein stated, with the ordinary use or hire of said slaves since they came as aforesaid unlawfully into the possession of the said De la Croix, with the lawful interest thereon, amounts to the sum of four hundred thousand dollars, 4-5th parts whereof is justly due to, and is hereby claimed by, your oratrix as aforesaid, in her capacity and relation of forced heir of the said Daniel Clarke, deceased. And your orator and oratrix further show unto your honors, that the said slaves now living, with all their increase, are now in the possession of the said De la Croix, and used and employed upon his plantation in the State of Louisiana, and that the revenue which they do or should produce is not less than twelve thousand dollars to fifteen thousand dollars per annum, as your orator and oratrix are informed and believe, and so charge; and your orator and oratrix further show unto your honors, and so charge the fact is, that the said De la Croix, for many years prior to his death, was the intimate friend of the said Daniel Clarke, and enjoyed his esteem and implicit confidence to so great a degree, that the said Clark committed to his charge his only child, your oratrix, to be educated under the immediate direction and care of said De la Croix, as he, the said de la Croix, well knew was expressed in the last will of him, said Clark, as hereinbefore stated; the existence of which said will of 1813 said De la Croix well knew, and that the same was suppressed or destroyed, as is clearly shown by the conduct of said De la Croix at the time of the probate of said will of 1811, in the then probate court of the parish of Orleans, when the said De la Croix made solemn oath in said court as to

his belief of the existence of said will; wherefore your orator and oratrix are compelled to believe, and do believe, and so charge, that the said De la Croix was corrupted by the said Relf and Chew, in being persuaded to cease his honest and commendable opposition to the probate of said will of 1811; and as a consideration for such conduct, receiving so large a portion of the estate of said Clark as herein stated, and at nominal prices—if, indeed, any sum whatever was paid by said De la Croix to said Relf and Chew, or either of them, which your orator and oratrix have good reason to believe, and do believe, was never paid; by reason whereof your orator and oratrix charge that said De la Croix acted in bad faith in the transactions herein set forth, and with a perfect and entire understanding of the consequences of his unlawful acts. Your orator and oratrix pray leave to refer to the affidavit of said De la Croix above referred to, on file with the records of the late probate court aforesaid, now in the custody of the clerk of the second district court of the city of New Orleans, an authentic copy whereof is filed herewith, marked in schedule C, and which your orator and oratrix pray may be made a part of this their bill. And your orator and oratrix further show unto your honors that the said Jane Green, since the filing of the said original bill of complaint, has departed this life, and left one or more heirs, whose names are at present unknown to your orator and oratrix, but whose residence is in Liverpool, England; and that the said Eleanor O'Bearne has also, since the filing of said original bill, departed this life, and has left heirs, who now reside in the city of St. Louis, State of Missouri; and that the said Sarah Cambell resides in the State of Pennsylvania, and is a citizen of said State; and that Caroline Barnes, late of St. Louis, in the State of Missouri, wife of Dr. John Barnes, has since the filing of said original bill departed this life, and has left children and heirs surviving her, who reside at St. Louis aforesaid. That each of said persons last mentioned claims to be entitled as the heir and devisee of Mrs. Mary Clark, deceased, to all and singular the estate, right, title, and interest which she, said Mary Clark, at any time had in and to the succession of the said Daniel Clark, deceased; and that as to the one-fifth part of the property herein described, as being a part and parcel of the said succession of said Daniel Clark, deceased, your orator and oratrix will hereby recognise, for all the purposes of this suit, the claims of said heirs and devisees to said one-fifth part of said property, rights, and equities herein set forth, as far as your orator and oratrix are concerned, or have any interest in opposing the claims and pretensions of the said heirs and devisees of said Mary Clark. To the end, therefore, that the said defendants may, if they can, show why your orator and oratrix should not have the relief prayed in said original bill, and in this amended and supplemental bill; and may, without oath, (which is hereby expressly waived,) according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by

note hereunder written they are respectively required to answer, that is to say:

' Interrogatory 1. Whether the slaves hereinbefore named were the same slaves acquired by the said De la Croix from said Relf and Chew, and which belonged to the estate of the said Daniel Clark, deceased; and what were the respective ages of said slaves, whose ages are not given herein? If the names and ages herein given are not correct, state them truly.

Interrogatory 2. Whether the twenty-two slaves last named were acquired by public sale, or by private act; at what time, and upon what terms and conditions, and under what circumstances, was the pretended transfer of the said last mentioned slaves made? State particularly.

Interrogatory 3. Whether any, and how many of said slaves originally acquired are now living; what are their names and ages respectively, and their present value; and how many of said slaves are now living; the children of any of said slaves originally disposed of as aforesaid, and their respective names and ages, and their present value; what are the names of those who have since died, and how old were they at the time of their death respectively; how many of said slaves originally acquired by said De la Croix, as herein stated, if any of them, were infirm and of little value; and what have the services of said slaves, and each of them, the sound and the disabled respectively, been worth per annum, and what are they now worth?

Interrogatory 4. Whether any of said slaves have been sold or otherwise disposed of by said De la Croix; if any, what are their names and how disposed of; where and to whom; and where are they now?

Interrogatory 5. Whether the greater part of said slaves, with their increase, are not now in the possession and use of said Dusuau de la Croix, in the State of Louisiana, and where; and what amount in gross is the services or use of said slaves worth per annum; and what is the necessary annual expenditure on account of said slaves?

And your orator and oratrix further pray, that, by the order and decree of this honorable court, your oratrix may be adjudged and decreed to be lawfully entitled, as the forced heiress of said Daniel Clark, deceased, to four-fifth parts of the value of said slaves herein mentioned, at the times they were disposed of by said Relf and Chew as herein stated, and also to four-fifth parts of the annual revenues which should have been derived from the proper use and hire of said slaves, with the lawful interest on said value and said revenues, from the times respectively when the same became due and should have been realized, year by year; also the four-fifth parts of the value of the increase of said slaves, as found at present, or that your oratrix may receive her legitime aforesaid in kind; and that the said De la Croix may come to an accounting with your oratrix respecting the value of said slaves at the time they were disposed of as aforesaid, and the revenues and profits derived therefrom, and the value of their increase; and that the said acts by which said De la Croix pretended to acquire a property in said slaves may be declared and decreed to be null and void and of no

effect for the purposes therein designed, or for any purpose, which could affect the rights and equities of your oratrix injuriously.

And that the said De la Croix may be declared and decreed not to have had, nor to have, any property, rights, title, or equity whatsoever, in and to said slaves, or either of them, by reason of the transactions herein stated, with said Relf and Chew, or either of them, nor to the increase or use of said slaves, against the just rights of your oratrix; and that he, the said Francis Dusuau de la Croix, may be adjudged and decreed to deliver up, under the order and direction of this honorable court, all and singular the said slaves, originally acquired by him, now living, with their increase, to be disposed of as the court shall order and direct, in order that your oratrix may receive her legitime, or four-fifth parts thereof, as a portion of the estate of her said father, the said Daniel Clark, deceased, according to the proportion of the entire estate of the said Clark, which the property and rights herein contained and specified may form and be found to be; or that said property may be sold, according to the directions of this honorable court, and the proceeds arising from such sale be brought into this honorable court, to be disposed of as it may hereafter order and direct, for the purpose of investing your oratrix with her just rights as forced heir of the said Daniel Clark, deceased; and that the said Francis Dusuau de la Croix may be ordered and decreed to pay over to your oratrix her legitime of said revenues derived from said slaves since he has possessed the same, as the amount may be found, upon a just accounting, to be; and that, for the better insuring of the performance of said order and decree by said De la Croix, the disposable portions of said slaves, or the property therein, may stand charged with such accounting and payment to your oratrix as aforesaid; and that your oratrix may have said further or other relief in the premises as the circumstances of her case may require, and to your honors may seem meet. May it please your honors to grant unto your orator and oratrix the writ of subpœna, issuing out of and under the seal of this honorable court, directed to the said Richard Relf, Beverly Chew, and Francis Dusuau de la Croix, commanding them, and each of them, by a certain day, and under a penalty therein to be inserted, to be and appear in this honorable court, then and there to answer the original, amended, and supplemental bills of complaint of your orator and oratrix, and then and there to stand to, and abide by, such order and decree therein as to your honors may seem meet, and agreeable to equity and good conscience.

And that, if the heirs of said Jane Green, the heirs of said Eleanor O'Bearne, the heirs of said Caroline Barnes, the said Sarah Cambell, or either of them, shall at any time be found within the jurisdiction of this honorable court, they, or either of them, may be in like manner commanded as above prayed.

And your orator and oratrix will ever pray, &c.

P. C. WRIGHT,
Solicitor of counsel for complainants.

Note.—Richard Relf and Beverly Chew are required to answer the interrogatories number 1, 2, and 3.

Francis Dusuau de la Croix is required to answer the interrogatories number 1, 2, 3, 4, [and] 5.

P. C. WRIGHT, *Solicitor.*

And afterwards, to wit, on the 4th day of December, 1848, the following order was made by the court, and entered of record in the minutes:

E. P. GAINES and Wife
vs.
RELF, CHEW et als. } No. 1731.

On motion of L. Janin, for Dusuau de la Croix, it is ordered that the said defendant have until the next rule day to answer the bill and amended bill of the complainants.

And afterwards, to wit, on the 3d day of January, 1849, judgment pro confesso was taken in this case against the defendant, F. D. de la Croix, and entered on the rule docket, as follows:

January 3d, 1849.

GAINES and Wife
vs.
RELF, Chew, and Dusuau de la Croix.

The appearance of the defendant, De la Croix, having been duly entered, by L. Janin as his solicitor, on the rule day in December last, and no answer having been filed at the rule day in January instant, according to the rules and practice of this court, it is ordered, on motion for P. C. Wright, solicitor for complainants, that the bill of complaint in this cause be, and the same is hereby, taken as confessed against the said defendant, De la Croix, for want of an answer.

And afterwards, to wit, on the 6th February, 1849, the following order was entered on the minutes:

ED. P. GAINES and Wife
vs.
F. D. DE LA CROIX et al. } 1731.

On motion of G. B. Duncan, esq., solicitor for F. Dusuau de la Croix, and on filing the answer of said defendant, it is ordered that the pro confesso entered in this cause be set aside.

Answer of François Dusuan de la Croix.

FRANÇOIS DUSUAN DE LA CROIX and others
ats.
EDMUND P. GAINES and Myra, his wife. } In chancery, No.

Circuit court of the United States, in and for the fifth judicial circuit, holding sessions at New Orleans, in the district of Louisiana.

The separate answer of François Dusuan de la Croix, one of the

defendants to the original bill and amended bill of complaint of Edmund P. Gaines and Myra Clark Gaines, his wife:

The said defendant, now and all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had, and taken to the many errors, uncertainties and other imperfections in said complainants' original bill and amended bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith: That this defendant admits that Daniel Clark departed this life in the month of August, 1813; he admits and avers that the said Daniel Clark did make his last will, in due form of law, on the 20th day of May, 1813; that by the said will Beverly Chew and Richard Relf were named and appointed the executors, with full power to settle everything relating to the settlement of the estate of the said Daniel Clark; that after the death of the said Daniel Clark, to wit, on the 17th day of August, 1813, the said will was, by judgment of the court of probates in and for the parish and city of New Orleans, ordered and adjudged to be probated; that afterwards, to wit, on the 27th day of August, 1813, the said court did grant unto the said Richard Relf letters testamentary, with the will annexed, of the said Daniel Clark. And further answering and insisting thereon, as matter of defence to the matters and things in said complainant's original bill and amended bill of complaint, the said defendant, François Dusuan de la Croix, to so much and to all and singular that portion and all parts of said original bill and amended bill of said complainants which charges or charge a combination or confederation on behalf of this defendant with other defendants or others; and to all and singular that portion, and to all parts of said original bill and amended bill of said complainants which charges or charge that the said Daniel Clark was married to one Zuline née Carriere; and to all such parts thereof as charge that the said complainant, Myra, is the lawful and legitimate child of the said Daniel Clark, and to all such like charges, whether made directly or by implication in said bill and amended bill of complaints, to each and all, collectively and severally, this defendant avers his unqualified denial.

And for further answer, by protestation, &c., not confessing, &c., to so much and to all and singular that portion, and to all parts of the said bill and amended bill of said complainants, which charges or charge "that the said François de la Croix, defendant herein, became possessed of fifty-six slaves," first in said bill mentioned, "by means of a fraudulent and simulated, unlawful and unauthorized act," and to that portion and all parts of said bill and amended bill of said complainants which charges or charge that the said defendant, François Dusuan de la Croix, at the time of the purchase of the aforesaid slaves "well knew that the said Relf and Chew, nor either of them, had any right, power, or authority whatsoever to sell or dispose of the said slaves," this defendant says, that he denies in the most unqualified terms the truth of all such charges.

And further answering thereunto says, that the said Daniel Clark, in his lifetime, to wit, the 20th day of May, 1811, made his olographic last will in the words and figures as follows: "In the name of God, amen. I Daniel Clark, of New Orleans, do make this my last will and testament. Imprimis, I order that all my just debts be paid; second, I leave and bequeath to my mother, Mary Clark, now (then) of Germantown, in the State of Pennsylvania, all estate, whether real or personal, which I may die possessed of; thirdly, I hereby nominate and appoint my friends, Richard Relf and Beverly Chew, my executors, with power to settle everything relating to my estate. New Orleans, 20th of May, 1811. (Signed,) Daniel Clark."

That the said Daniel Clark being then, and for many years previous, domiciled in the parish and city of New Orleans, departed this life as aforesaid, to wit, on the 13th day of August, 1813, leaving, as the said defendant is informed and verily believes, the aforesaid will among his private papers as his last will; and after the death of the said Daniel Clark the said will was taken into possession of the law officers appointed for that purpose, and ordered and adjudged to be probated, as aforesaid, by the court of probates in and for the parish and city of New Orleans, which alone had jurisdiction thereof; and thereupon letters testamentary with the said will annexed of him, the said Daniel Clark, were granted to the said Richard Relf as aforesaid.

And the defendant answering, respectfully refers to the said proceedings in the aforesaid court of probates, and intimates his readiness, at any time when this honorable court may direct, to produce and file copies of said proceedings and all other proceedings therein, as exhibits, and make the same part of this answer; that by the will aforesaid of the said Daniel Clark, regularly probated as aforesaid, the said Daniel Clark did make, constitute, and appoint his mother, Mary Clark, then living near Philadelphia, Pennsylvania, his universal heiress and legatee, giving and bequeathing unto her, the said Mary Clark, all his, the said Daniel Clark's, property, real and personal; whereby, and after the death of the said Daniel Clark, and by virtue of said last will, and the judgment of the court of probates aforesaid, which said judgment stands yet unreversed and unrevoked, the said Mary Clark became vested of, and the sole and absolute owner of, all the estate, both real and personal, whereof the said Daniel Clark died possessed; and she, the said Mary Clark, was the proper and only person legally authorized to sanction, consent to, or approve the acts and doings of the said Chew and Relf, or either of them, in reference to the management, control, and disposition of said property belonging to the estate of the said Daniel Clark, other than the authority vested by law in the said Chew and Relf, by virtue of the proceeding in the court of probates aforesaid, and by the last will of the said Daniel Clark.

And the said defendant, François Dusuan de la Croix, further answering, &c., says and declares, that shortly after the will of the said Daniel Clark had been probated in manner and form as aforesaid, by

which the mother of the said Daniel Clark was duly recognised and appointed the sole and only heiress and universal legatee of said Daniel Clark, and as such the only person in interest, as in fact she was the only heir-at-law of said Daniel Clark; she, the said Mary Clark, universal heiress and legatee at law of the said Daniel Clark, did make, constitute, and appoint, by power of attorney duly and properly executed, and dated on or about the first day of October, 1813, the said Chew and Relf her lawful attorneys in fact, with full and specific powers, jointly and severally, for her, the said Mary Clark, and in her name, to take possession of, and to hold all and every part and parcel of the real and personal estate of the said deceased Daniel Clark; to manage, direct, bargain, agree for, and make sale of, the same or any part thereof; to receive and receipt for, to grant acquittances and discharges in due form of law; to make, execute, and deliver such acts, deed or deeds, as might be necessary for the conveyance of or assurance of any real estate, &c.; and generally in the premises to do, execute, and perform all and whatsoever shall be requisite and necessary, in as full and complete a manner, to all intents and purposes, as she, the said Mary Clark, could have done if she had been personally present; promising and engaging to ratify whatsoever the said Richard Relf and Beverly Chew, or either of them, might do or cause to be done by virtue of said power of attorney; which said power of attorney was duly executed, by the said Mary Clark, on or about the day and year aforesaid, and was subsequently received and accepted, and caused to be made a public act, according to the laws of Louisiana, by the said Richard Relf and Beverly Chew, and each of them; a copy of which said power of attorney is filed in this suit as an exhibit, marked (,) and made part of this answer.

And further answering, &c., the said defendant, Francois Dusuan de la Croix says, that inasmuch as the said Daniel Clark had, by his will, which had been duly probated as aforesaid, appointed, constituted, and named his mother, Mary Clark, his sole and universal heiress and legatee, who subsequent to the death of the said Daniel Clark accepted the estate of the said Daniel Clark without benefit of inventory, and gave and granted unto the said Beverly Chew and Richard Relf, severally, full and specific authority, as before in this answer set forth, it was not necessary the sale of any part or parts of said estate, real or personal, of the deceased Daniel Clark should be made at public auction, or in any other way or manner than such as, in their opinion, would best promote and secure the interest of said estate and the said Mary Clark.

And for furthering answer, &c., this defendant says, that when the said will of the said Daniel Clark was admitted to probate as aforesaid, the said Beverly Chew was temporarily absent from the State, and that letters testamentary, with the said will annexed, were not granted unto the said Beverly Chew until on or about the 21st day of January, 1814; and that during all this interval, to wit, from or about the 27th

day of August, 1813, till on or about the 21st day of January, 1814, the said Richard Relf was the sole acting testamentary executor of the said deceased Daniel Clark.

And the said defendant, François Dusuan de la Croix, further answering to so much and to all and singular that portion and to all parts of said bill and amended bill of said complainants, which charges or charge this defendant of having obtained or acquired by fraudulent and unlawful means, or for nominal or inadequate prices, possession of the aforesaid slaves, saith, that he, the said defendant, became lawfully, and without fraud and simulation, and for good, and lawful, and full consideration, the rightful possessor and owner of said slaves, and in manner the following, to wit: On the 10th day of October, 1812, the said Daniel Clark of the one part, and the president and directors of the New Orleans Navigation Company of the other part, made and entered into an agreement, before John Lynd, notary public in and for the city of New Orleans, in which said agreement the said Daniel Clark, at his own proper cost and charge, undertook to dig out the canal Carondelet, and to perform other work with said canal connected, as in said agreement specified; in consideration whereof the said president and directors of said Orleans Navigation Company covenanted and agreed, to and with the said Daniel Clark, to pay or cause to be paid to him, the said Daniel Clark, his heirs and assigns, the sum of $55,000 lawful money, &c., in manner the following, to wit: the sum of $13,000 on the 1st day of January then next, &c., &c.; all of which will more fully appear by reference to said act, a copy of which is herewith filed in this suit as exhibit marked (N,) and made part of this answer.

On the same day and before the same notary public, the said Daniel Clark, together with the said Beverly Chew, and the said defendant, François Dusuan de la Croix, jointly and severally bound themselves, their respective heirs and assigns, by public act, unto the said president and directors of the said Orleans Navigation Company, in the sum of $20,000, for the faithful performance by the said Daniel Clark of all and singular the conditions and obligations of the aforesaid contract, and for the perfecting and finishing of the work in said act contracted to be done by the said Daniel Clark; all of which will more fully appear by reference to said act, a copy of which is herewith filed as exhibit marked (O,) and made part of this answer; that on or about the first day of January then next, "to wit," January, 1813, the said president and directors of the said Orleans Navigation Company paid to the said Daniel Clark the sum of $13,000, according to the covenants and promises of their contract aforesaid.

That the said Daniel Clark, being the legal owner of the said slaves, did, in his lifetime, to wit, on or about the day of , 1813, mortgage the same, with others, to one Madame Hardy de Boisblanc, for a sum upwards of $13,000, which said act of mortgage this defendant believes bears date May 19th, 1813, and was passed before Marc Lafitte, then a notary public of this city; that at the time of the pur-

chase of said slaves by this defendant, as hereinafter stated, there was then, to wit, on the day of December, 1813, due the said mortgage creditor for and on account of said mortgage debt by the succession of Daniel Clark, the sum of $13,440, thereabout; that the said Daniel Clark departed this life on the 13th day of August, 1813, leaving unperformed, unfinished, and incomplete, the conditions and obligations which he, the said Daniel Clark, for himself, his heirs, and assigns, by his aforesaid contract with the president and directors of said navigation company in and by his hereinbefore recited contract with said corporation; that in truth and point of fact said Clark had performed a very inconsiderable part of said work so by him undertaken to be performed, and the same was by no means equal to the amount of money which he had received from said company, to wit, the sum of $13,000.

This defendant, François Dusuan de la Croix further answering herein saith, that the foregoing is a true and faithful account of the condition of things at the time of the death of said Clark as aforesaid, in reference to the contract of said Clark and the navigation company, as well as the subsisting mortgage obligation then existing on the said slaves herein referred to in favor of Madame Hardy de Boisblanc.

This defendant further answering, &c., saith, that the sole acting testamentary executor of the aforesaid will of the said Daniel Clark, and the attorney in fact of the said Mary Clark, to wit, the said Richard Relf, being desirous to disburden the said estate and its heiress of the trouble and exertions which would be necessary to complete the onerous contract made and entered into with the Orleans Navigation Company; and the said defendant believing that the embarrassed condition of the succession of the said Daniel Clark would delay, if not render wholly impracticable, the performance of the aforesaid contract; and being bound with another jointly and severally in the sum of $20,000 for the due performance of said contract, and as security for the said Daniel Clark, and wishing to protect, indemnify, and save himself harmless against all damage, injury, and loss, that might unto him accrue by a failure of said heiress and legal representative of said Daniel Clark to perform the conditions and obligations of said contract; the said Richard Relf, testamentary executor of the said Clark, and attorney in fact of said Mary Clark as aforesaid, and the said defendant, François Dusuau de la Croix, made and entered into a contract on the 11th day of December, 1813, before John Lynd, a notary public in and for the city of New Orleans, by which the said Richard Relf, testamentary executor (of the said Clark) as aforesaid, and attorney in fact, of Mrs. Mary Clark, universal heiress and legatee as aforesaid, and acting therein as such, did grant, bargain, sell, and assign, unto this defendant, all the right, title, and interest of the said succession and heiress in and to the aforesaid contract; the said defendant, on his part, by the said act of sale and transfer, accepting the said assignment, and putting himself in the place and stead of the succession and heiress of said Daniel Clark; a copy of the aforesaid act is

herewith filed in this suit as exhibit marked (R,) and made part of this answer.

This respondent further answering says, that on the same day the said Richard Relf, sole acting testamentary executor as aforesaid, and attorney in fact of the said Mary Clark, and acting therein as such by authentic act dated the 11th day of December, 1813, and made before Marc Lafitte, a notary public of this city, sold, transferred, and conveyed to him, the said defendant, the aforesaid slaves for the price and consideration of $21,220, part of which sum, to wit, $13,440, said defendant by the aforesaid act assumed to pay, and afterwards did pay, on account of said succession, to Madame Hardy de Boisblanc, in satisfaction and acquittance of a mortgage which Daniel Clark had executed in favor of the said Madam Hardy de Boisblanc upon said slaves, and others as aforesaid, and which subsisted in full force and virtue in law upon said slaves when they came into the possession and ownership of this defendant; the succession and heiress of said Clark, *of said Clark*, being thereby ever afterwards wholly discharged and acquitted of all liability thereon; a copy of the aforesaid act is herewith filed in this suit, as exhibit marked (S,) and made part of this answer; and as to the balance remaining unpaid of the purchase money, to wit, the sum of $7,760, said defendant says, that the succession of Daniel Clark was indebted to him in about the sum of $8,523 84, it being an allowance made said defendant by the testamentary executor of said succession, and attorney in fact of said Mary Clark, as the value of certain work performed by said defendant under the contract of said Clark with the Orleans Navigation Company, and for which he, the said Clark, had received pay and compensation previous to his death; the said navigation company having paid to the said Clark the sum of $13,000 as aforesaid, whereas the value of the work performed by said Clark at his death under the aforesaid contract with said company was about the sum of $4,000; that the real consideration paid by this defendant for said 55 slaves was the aforesaid assumption of the said debt due Madame Hardy de Boisblanc of $13,000, and which was paid by this defendant, the aforesaid allowance as the value of the work performed by this defendant as aforesaid, and some small debts due by said Daniel Clark to this defendant, contracted by said Clark during his lifetime; all of which this defendant avers was in good faith, and was a full consideration actually paid for said slaves.

And further answering with protestation, &c., not confessing, &c., to all and singular that portion, and to all parts of said original bill and amended bill of complaint of said complainants, which charges or charge that this defendant became possessed of other twenty-two slaves in said amended bill of complaint referred to, by unlawful means or by title wholly void and of no effect, said defendant saith, that he denies in the most unqualified terms the truth of all such charges.

And further answering thereto says, that there were twenty-three of the aforesaid slaves and not twenty-two as charged in said amended bill of said complainants, and that this defendant became possessed of

the said twenty-three slaves by a title good and valid in law, in manner following, to wit, said slaves, by order of the court of probates, in and for the parish and city of New Orleans, dated , were exposed to sale at public auction by the proper officer of the law, to wit, the register of the said court, on or about the 4th and 5th days of October, 1813, and after all due proceeds in form of law, were adjudicated to said defendant by the aforesaid officer of the law at the price and value of $8,800, which said sum said defendant paid to the proper persons authorized to receive the same.

And afterwards, to wit, on the 5th day of October, 1813, the said defendant and Richard Relf, sole acting testamentary executor of the succession of Daniel Clark, went before Marc Lafitte, a notary public in and for this city, and then and there executed an authentic act, by which said adjudication is evidenced and proved; a copy of which said act is filed herewith as exhibit marked (P_2) and made part of this answer.

This defendant further answering avers, that said sale by order of the proper court at public auction, for a valid and adequate consideration paid, gave him a full and absolute title thereto as owner of said twenty-three slaves.

And this defendant, François Dusuau de la Croix, for further answer answering saith, that to all and singular that part and all parts of said original and amended bill which charges or charge that this respondent came into possession of other twenty slaves than those named and referred to in the foregoing parts of this answer, is and are hereby traversed and denied.

And this defendant, François Dusuau de la Croix, for further answer, to the said original and amended bill of complainants, and to all parts thereof, in reference to the aforesaid two gangs of slaves, saith, that the price paid therefor by this defendant was a full and fair price, being absolutely as much as they were worth, the same being what were then termed "American negroes," and many of them were old and infirm, while others were so young and small as at the time to be of little value.

This defendant further answering saith, that although the number of said slaves was as expressed in the aforesaid two acts of sale to him, and the price therein mentioned had reference to the number of negroes therein named, yet in truth, when the actual delivery was made, it appeared that the number actually delivered to this defendant by said vendor was not as great by several negroes as the number expressed in the act of sale, so that some inconsiderable sum was allowed on settlement on said account; but what the number was short, or the precise sum allowed on settlement was, this defendant is not now able to say at this time.

And this defendant, François Dusuau de la Droix, for further answer to the original and amended bill of complaint, and to all and singular those parts which speak of this defendant in connexion with a will alleged by complainant to have been made in the year 1813, and to all and singular those parts which speak of a petition or opposition which

this defendant caused to be filed in the court of probates, in and for the parish and city of New Orleans, in the month of August, 1813, stating the belief of this defendant that the deceased Daniel Clark had made a subsequent will to the one then presented for probate, dated May, 1811, and which was subsequently probated; and to all such parts of said original bill and amended bill which charge that a will, dated in 1813, made by said Daniel Clark, was shown to this defendant by said deceased; and to all such parts of said original bill and amended bill of said complainants which charge that said Myra was the legitimate child of said Daniel Clark, this defendant saith that, it is not true as charged that this respondent ever saw any such will, or any other will of said Daniel Clark during the lifetime of said Clark, or after his death, other than the one dated in May, 1811, and that one this defendant never saw until it was filed in the court of probates after the death of said Daniel Clark; that true it is, a short time before the death of the said Daniel Clark, this defendant being on a visit to said Clark, he, the said Daniel Clark, had apparently just finished sealing a package, when this defendant came into his presence; and the said Daniel Clark addressed to this defendant words to this effect, as nearly as this defendant can now recollect, "that this parcel (which he, the said Clark had in his hand, or which lay near him) contains my will and other papers, which may be useful in case of accident;" but this defendant answering avers, that he never saw the so-called will, and knows nothing more than what Clark told him about the contents of said parcel; and that conversation it was which induced and influenced this defendant in causing the said proceedings referred to in the court of probates aforesaid in the year 1813; this defendant was impressed with the belief that there was another will, and acted accordingly; but when it was not found among said Daniel Clark's private papers, and could not be found in any of the offices of the notary publics in the city, this defendant concluded that Clark had made other dispositions, or changed his intentions, and this defendant gave the subject no further consideration.

This defendant further answering states, that the said Daniel Clark, in the aforesaid conversation with this defendant, stated distinctly, in reference to said parcel, that it contained also what will remove, if possible, the stain on that little girl's birth, meaning, as this defendant supposed at the time, and still supposes, the then child Myra, now one of the complainants, whom this defendant had seen at the house of Samuel B. Davis some time before, and at which time he, the said Daniel Clark, told this defendant that he, the said Clark, had a child by a married woman, and he wished this defendant to be her tutor.

And this defendant further answering saith, that before the death of said Daniel Clark, and as nearly as he can now recollect, in the year, to wit, 1810, this defendant being with the said Daniel Clark at the house of Samuel B. Davis, in whose family the said complainant, Myra, then was, as a child apparently about six or seven years old, he, the said Daniel Clark, called the attention of this defendant to the child Myra, and told this defendant that he, the said Daniel Clark, was the

father of the said child Myra, that the mother of the said child Myra was a married woman, and the said Clark then applied to this defendant for permission to appoint him, this defendant, the tutor of said child Myra, which this defendant at once refused to allow, informing him, the said Daniel Clark, that he could not act in said capacity to an adulterous bastard, as the said child was, according to the statements of the said Daniel Clark to this defendant at the time last aforesaid; that, on defendant's giving this reply, the said Daniel Clark ceased the conversation on that subject, and never renewed it again or referred to the subject, except when, as stated, he, the said Daniel Clark, spoke to this defendant in reference to the package said by said Clark to contain his will and other papers, as hereinbefore stated, and which conversation at the house of said Clark was subsequent to the one referred to as having been held at the house of Mr. Sam'l B. Davis; and when Clark spoke of the papers as intended to wipe off, as far as possible, the stain upon the birth of that little girl, this defendant understood him to refer to the said child Myra, of whom and of whose birth he had previously spoken to this defendant at the house of Mr. Samuel B. Davis.

And the said defendant, François Dusuau de la Croix, further answering said complainants' original and amended bill, and to so much and to all parts thereof, as charges or charge that said Myra is the legitimate child of said Daniel Clark, born in lawful wedlock with Zuline née Carriere, this defendant says, that he denies all and singular all such allegations; he denies that said Clark was ever married to the mother of the complainant Myra; because, he says, at the time of the birth of the said child Myra, and for many years previous, the said mother was the lawful wife of one Jerome de Grange, who was living at the time of the birth of said Myra. He denies that said Clark ever let it be known to the community of New Orleans, or elsewhere, that said Zuline née Carriere was his, the said Daniel Clark's, lawful wife, by living and cohabiting with her as such, or by presenting her to the community as such; and therefore, even if there was any such marriage as is by said complainants averred, *and* denied by this:

This defendant further answering, and insisting thereon as matter of defence to the said original and amended bill of complaint, saith, that the act of the said Daniel Clark and the said Zuline née Carriere, in suppressing the fact of such alleged marriage from the community, and the said Daniel Clark in the numerous public acts of sale which he made in New Orleans after the time of the alleged marriage, without the interposition even in one single case of said Zuline née Carriere as the wife of him, the said Daniel Clark, to renounce the rights which she would have had if in truth she had been the wife of said Daniel Clark, was a legal fraud upon the part of said Daniel Clark, and such an imposition on his part as would protect any and all sales of property made either by him, the said Daniel Clark, in his lifetime, or by the executors of his will of 1811, or his mother Mary Clark, his universal heiress and legatee under said will of 1811, until said fact of said alleged private marriage was either made manifest to the public or per-

sonally known to the purchasers of property. All of which facts and conclusions this defendant, François Dusuau de la Croix, alleges as matters of defence, and will rely upon the same as fully as if the same had been fully and specially pleaded and set forth.

And the said defendant, Dusuau de la Croix, for further answer to said bill and amended bill, and particularly to said parts of said amended bill wherein and whereby it is charged that this defendant "well knew" of the existence of a will charged by said complainants to have been made by Daniel Clark in 1813; and to that portion of said amended bill wherein it is charged that the said will, so by said Daniel Clark made in 1813, as charged by complainants, was destroyed, and that this defendant well knew that said supposed will had been suppressed or destroyed; and to that portion of said amended bill, wherein the charge is made by said complainants that this defendant, François Dusuau de la Croix, was corrupted by the said Relf & Chew, in being persuaded to cease his honest and commendable opposition to the probate of said will (meaning the will of Daniel Clark) of 1811, and, as a consideration for such conduct, receiving a large portion of the estate of said Clark at "nominal prices:"

This defendant answering saith, that all such charges, whether made directly or indirectly, are by this defendant, François Dusuau de la Croix, indignantly and scornfully denied, and *answers* avers that such charges, and each of said charges against him, could only have sprung from [a] diseased mind. He avers that there is not a particle of truth in one single one of said charges, and that they are wickedly and malignantly false. True it is this defendant, François Dusuau de la Croix, was for many years on the most intimate friendly relations with the said Daniel Clark, but it is not true that said Clark ever committed to the charge of this defendant the said complainant Myra; but the truth is, as before stated, this defendant refused to have said Myra committed to his charge when thereto requested by said Daniel Clark, on the sole ground of the circumstances connected with her origin and birth, as they were detailed by said Daniel Clark to this defendant.

This defendant expressly answers to said parts of said amended bill, that he would willingly have obliged said Daniel Clark, by allowing [him] to commit said Myra to his charge, if the said Clark had informed him that the said then child, and now complainant, Myra, was his legitimate child; but said Daniel Clark having distinctly informed the defendant to the contrary that she was not, this defendant thereupon declined having the charge of said child, or any thing to do with her education.

And this defendant, François Dusuau de la Croix, further answering, saith, in response to that part and all parts of said amended bill of complaint, which charges that the original bill herein was brought to a hearing, &c., upon the answer of Charles Patterson, one of the defendants therein, and to final decree both in this honorable court and in the Supreme Court of the United States, saith, that he has been informed and believes that so much of said bill made by way of supple-

ment is true; and further answering that part of said amended bill of complaint which sets forth the decree in said suit as against said Charles Patterson, as a matter to be by them, the said complainants, set forth and pleaded, as they have set forth and pleaded the same, as binding and conclusive upon this defendant, and as res judicata upon the defendant; this defendant saith that he was no party whatever to the decree made in said case as against Charles Patterson, or any of the proceedings on the trial of the case as against said Patterson, either in this court or before the Supreme Court of the United States; he states that the case, as to this defendant, was not even at issue at the time of the trial and subsequent decrees in the case as against said Patterson. That, true it is, the counsel of this defendant had prepared certain cross interrogatories to those propounded by complainants to certain witnesses therein named, but that the same was done under protest, and with full and complete reservation of all the rights of this defendant in the premises. And further answering to said last referred to parts of said amended bill this defendant saith, that under no circumstances can he be concluded or bound by the complainants' said proceedings as against the defendant, Charles Patterson; and particularly this defendant charges, that he cannot be thereby bound, because he saith that the trial of said case, as *as* to the defendant, Charles Patterson, was wholly and entirely void as to this defendant; because he, this defendant, saith, and answering, so charges the fact to be, that the entire proceedings of said complainants and Charles Patterson, in the trial of said case, was false and fraudulent, and was by no means intended as a fair and honest trial to determine the issue as against the defendant, Patterson, only, but was intended to obtain a decree as against the defendant, Patterson, by collusion and fraud on the matters in said original bill contained which were common to all of the defendants; and, among other things, upon the issue of the legitimacy of the complainant, Myra, in the absence of all evidence which the other defendants in said original bill named might have adduced to show the illegitimacy of said complainant, Myra, and to destroy the effect of such testimony as was adduced by said complainants on the trial of said case as against the defendant, Charles Patterson; and then afterwards, as is now attempted, plead the same as a bar to the investigation of said issue by those who had an interest in making said issue. He charges as fraud against said decree so as aforesaid rendered against the defendant, Charles Patterson, that it was a decree in part consented to by said complainants and Charles Patterson, as will be evidenced and proved in many ways; and, among others, by the fact said case was submitted to the court on one day, and that on the following morning a decree was brought into court, in the handwriting of the counsel of the complainants, to wit, R. H. Chinn, esq., in which, as a part of the decree of the court, it was agreed between the complainants and said Patterson that he, the said Patterson, should be left in possession of the property claimed from him by complainants, and take an appeal

from said decree without any security whatever; that in fact the complainants have always hitherto, and still do, allow said Patterson to enjoy said property as owner; and so little respect have said complainants for said decree, that they have again made Charles Patterson defendant to their present amended bill, claiming the same parcel of ground in the former decree referred to; all of which facts, and many other acts of fraud which this defendant claims the right to adduce on the trial of this case, he declares render the decrees mentioned by said complainants as having been rendered against Charles Patterson wholly null and void as to this defendant; and which fraud this defendant now puts forth as ground of defence, in the same manner as if he had set the same out more fully and particularly, by way of special pleas, or otherwise. And he prays that the court may investigate this case upon its own merits, disregarding said decrees so rendered against Charles Patterson; first, as res inter alios acta as to this defendant; and, secondly, because they are collusive, and even fraudulently procured.

And the said defendant, François Dusuan de la Croix, for further answer saith, that if by any possibility there should be a decree herein in favor of the complainants, to the end that the slaves hereinbefore referred to should be given up by this defendant, he saith that then and in that case there should be annexed to and [made] part of said decree, that the defendant is entitled to a decree against the complainants for the aforesaid several sums, and others which he hath paid for said slaves, together with interest at the rate of six per cent. thereon, from the time of payment annually and every year; and the said interest to be computed from year to year as part and parcel of the capital sum, with interest, together with the additional sums of money which he may hereafter show that he hath paid for the support and maintenance of said slaves respectively, to the State, parish, and other municipal authority, with interest on sums from the dates of the various payments; all of which the defendant now claims as fully as if he had set the same forth by way of cross bill or otherwise, and prays the protection of the equity power of this honorable court in the premises.

And the said defendant, François Dusuan de la Croix, for *for* further answer to said bill and amended bill, and defence thereto, saith, that the will of Daniel Clark, dated in May, 1811, was duly probated; that the probate never was reversed; that Richard Relf was duly qualified, and acted as executor of said will, and was in possession of said slaves at the time of the aforesaid sales to this defendant; that said Relf was also in possession of full powers of attorney to the only legatee mentioned in said will of Daniel Clark, and full right as such to sell said slaves; that a part of said slaves were sold by order of court, and purchased by this defendant at public auction; that the prices paid were full and adequate, and actually paid; and all of which facts he pleads as a good and valid title in law and equity to said slaves; and furthermore, he pleads the laws and statutes of limitation and prescription of the State of Louisiana, in such cases made and provided, as an absolute title in this defendant to all and singular the said slaves and

their increase, and will rely on the same as fully as if the same had been herein specially pleaded herein.

And the said defendant, François Dusuan de la Croix, for answer to the interrogatories propounded to him by complainants as part of their amended bill, saith, in reply to the 1st interrogatory: That he hath not been able to make a careful comparison of the names of the slaves as they are designated in said bill, and amended. He, however, believes that the two gangs, one of 55 and the other of 23, are correctly called in said bill, but if there be any variance in their names as therein called, and as they are named and called in the titles of this defendant, annexed hereto as exhibits, (marked S and P,) then they are not property called in said original and amended bill; otherwise, yes. The slaves which he claims, an[d] named in said two exhibits, did once belong to the succession of Daniel Clark. This respondent is unable to say anything more about the ages of said slaves, or any of them, further than is disclosed in said titles and exhibits, (marked S and P.)

In answer to the 2d interrogatory he saith: That he knows nothing about the slaves referred to in said interrogatory; but from similarity of the names, as given in said original and amended bill, he presumes that complainants have confounded them with others claimed and owned by this respondent, as set forth in his answer to said original and amended bill, as many of them appear to be duplicate names.

To the third interrogatory he saith: That it is utterly impossible for him to answer how many of said slaves are now living, or to give their names, ages, or value, or at this time to answer any part of said interrogatory other than the last part, and even that it is exceedingly difficult for him to give a definite answer unto, as he never kept any books of such transactions, but thinks, *but thinks*, that taking the whole of said two gangs in mass, and by way of general average, that their services, over and above their support, would be fairly rated at about forty dollars per annum.

To the fourth interrogatory he saith: That he hath no recollection of ever having sold any of said slaves, and believes that he never did.

To the fifth interrogatory he saith: That the slaves purchased by him of the succession of Daniel Clark are now in his possession, with their increase, except those which have since died. They are on the plantation of this respondent in the parish of Orleans, and the amount in gross of the value of the services of said slaves, after deducting the expense, would be reasonable, rated at forty dollars per head per annum.

And now the said defendant, François Dusuan de la Croix, for further answer to the original and amended bill, denies all manner of unlawful combination and confederacy, wherewith he is charged; without this, that there is any other matter, cause, or thing in the said bill of complaint as amended contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, avoided, or denied, is now hereby

traversed; and this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, this his answer, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

And this defendant, now and at all times, expressly refusing the tender made him by complainants to dispense with the oath of this defendant, but claiming all rights and advantages to be had from the exercise of said rights, does make the foregoing answer to said original and amended bill, as also to the interrogatories, under his oath in due form of law.

GREER B. DUNCAN,
Solicitor for the defendant.
FRANCOIS DUSUAN DE LA CROIX.

The defendant, François Dusuan de la Croix, on his corporeal oath doth declare: That the facts stated in the foregoing answer, so far as the same are therein stated and set forth, as from his own knowledge, are each and all severally true; and that so far as the same are stated from knowledge derived from others, he believes the same to be true.

DUSUAN DE LA CROIX.

Sworn to and acknowledged before me, this 5th day of February, 1849.

M. M. COHEN,
U. S. commissioner, circuit and district court, for the district of Louisiana.

Endorsed.—Filed February 6th, 1849.

WILLIAM AUDRY,
Deputy clerk.

Exhibit (No. 1,) filed with the answer of F. de La Croix.

This agreement, made and entered into by and between Daniel Clark, of this city, esquire, of the one part, and the President and Directors of the Orleans Navigation Company of the other part, witnesseth: That the said Daniel Clark shall and will, at his own proper cost and charge, dig out the present canal Carondelet, so that it shall be twenty-five [feet] wide at the water line of low tides, from its junction at the bayou St. John to the present basin, in the rear of the burned hospital, and to have four feet depth of water at low tides for the whole extent and width; that the said Daniel Clark shall make three several circular basins of sixty feet diameter, and to be every where of the same depth as the canal, at such three places on the canal as shall be determined by the said president and directors; that he, the said Daniel Clark, shall also enlarge the present basin at the rear of the hospital before mentioned, to the dimensions of three hundred and sixty feet length, and one hundred and eighty feet breadth, giving it in every part the same depth

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of water as the canal; and the sides of the said basin shall be faced with piles, planked from the bottom to the top; and the piles, plank, and iron work necessary for securing the same, shall be of the dimensions, quantity, and weight specified in the list hereunto annexed; the work shall be carried on according to the lines of direction, and to the levels which will be marked and picketed under the orders of the said president and directors. The said Daniel Clark shall furnish all working tools and machines necessary for the undertaking at his own cost, with leave however, to make use of such tools and machines as the company possesses, when the same shall not be wanted for the company's use. That the said Daniel Clark shall and will employ a part of the earth so to be dug out of said basin and canal, in forming on the south side of the canal a levee sufficient to keep out back water; and of the remainder of the earth, shall form a good road on the north side of the canal, which road shall be in every place at least thirty feet — wide; but in the making said road, he shall not be obliged to employ more earth than the requisite deepening and widening the said canal and basin will furnish; and the said Daniel Clark further contracts and covenants, to and with the said president and directors, that he will commence the said work on or before the end of December next, and that from and after that time, and until the completion of the said work, he will have in employ at the same, not less than sixty laborers; also, that he will forthwith execute a bond to the said president and directors, with two sufficient securities to be approved of by them, in the penal sum of twenty thousand dollars, conditioned for the faithful performance of the conditions of this contract, and for the perfection of the said work; and that also he will give adequate security, to the satisfaction of the said president and directors, for the sum which shall be advanced to him at the commencement of the undertaking; and the said president and directors do hereby covenant and agree, to and with the said Daniel Clark, that for and in consideration of the work hereby and herein undertaken to be performed by him in the manner before mentioned, they will well and truly pay, or cause to be paid, to him, the said Daniel Clark, his heirs and assigns, the sum of fifty-five thousand dollars, lawful money of the United States of America, in manner following, to wit: The sum of thirteen thousand dollars on the first day of January next; provided, of thirteen thousand dollars when one-third part of the work shall have been done; the further sum of thirteen thousand dollars, when the work shall have progressed two-third parts; and the remainder, being sixteen thousand dollars, when the whole shall be completed and finished. All the measures specified in this contract, or referred to, are hereby declared to be French; and it is further covenanted and agreed between the parties hereto, that if the progress of the work should be arrested by legal authority, the work at such time already done, shall be immediately appraised by discreet persons, to be mutually chosen by the parties, and the amount of such appraisement shall be credited to the said Daniel Clark by the company, and the said company shall also allow and pay him the sum of six hundred dollars per month for

every month that such suspension shall continue, provided the same shall not *not* exceed six months; and if the said suspension shall continue and endure for the space of six months, it shall then be lawful for either of the parties hereto to annul and make void the contract by notice to that effect formally given. And it is further covenanted, that in the event of this contract being so annulled, the said company shall and will give credit to the said Daniel Clark the amount of all such sums as he shall have bona fide expended for the transportation of the slaves which he may have brought to this city and employed in the projected work; and also the amount of all materials and tools provided by him for the same; of all which expenses the said Daniel Clark engages to keep an exact account, and thenceforth all the said materials and tools shall belong to the company; and it is further agreed by the said Daniel Clark, that in the event of this contract so as aforesaid annulled, he will forthwith adjust the account between him and the company, and pay such balance as may be due by him to them, within the space of six months from the date of the abolishment. And it is further agreed, that the payment of the sum of six hundred dollars per month, which shall be made monthly, if required by the said Daniel Clark, shall take place from the time of suspension by legal authority; but if such suspension shall take place prior to the first day of January next, it shall not operate to prevent the advance herein before stipulated being made to him; the same however shall be refunded to the company in case of final suspension, or of the annulling this contract, subject to the conditions above mentioned; always provided, however, that if the work shall be stopped by municipal or other lawful authority, in consequence of the insalubrity of the city during the hot months, no allowance shall be made by such suspension to the said Daniel Clark, any thing to the contrary in the foregoing notwithstanding. And it is covenanted, that when suspension of the progress of the work, proceeding from any of the causes before mentioned, shall have ceased, the said Daniel Clark shall recommence his operations within one month after formal notification of the same to him by the company.

Thus done and passed at New Orleans, this tenth day of October, one thousand eight hundred and twelve; the president of said company, James Pitot, esq., appearing on the part of the said president and directors, hereunto signs his name and affixes the common seal of the said company, accepting this contract; and the said Daniel Clark also hereunto signs his name, together with George Pollock and Carlisle Pollock, witnesses, and me, notary.

List referred to in the foregoing act:

476 pelotis or peles, 15 feet long, ½ square.
144 do 7 ½
144 do 10 ½
1,080 feet scantling, ⅓
1,080 " 18 and 26 ½
9,720 feet plank, of 2 inches thick and one foot wide
144 iron pieces, of 15 inches long, three pounds each

144 cramps, of 34 inches, w'g eight pounds each
500 spikes, of four inches, 300 do. of ten inches.

Original signed:

J. PITOT,
President of the Navigation Com'y.
DANIEL CLARK,
GEORGE POLLOCK,
CARLILE POLLOCK.
JOHN LYND,
Notary public.

A true copy.
New Orleans, 19th January, 1849.

"The works shall have been commenced; the further sum of" (this reference approved) and two words erased, null (in this copy.)

[SEAL.] THO. GUYOL, *Notary.*

Exhibit (O) filed with the answer of F. De la Croix.

Be it known, that this day, before me, John Lynd, notary public in and for the city of New Orleans, personally appeared Daniel Clark, together with François Dusuan de la Croix and Beverly Chew, all of this city, who declared that they are, by these presents, jointly and severally bound unto the president and directors of the Orleans Navigation Company, their respective heirs and assigns, in the sum of twenty thousand dollars, lawful money of the United States of America, to be paid to them, the said president and directors, or their certain attorney, successors, or assigns; to which payment, well and truly to be made, they, these appearers, bind themselves and their respective heirs, firmly by these presents: with condition, nevertheless, that if the said Daniel Clark shall faithfully perform all and singular the conditions of a contract, this day made and entered by and between him and the said president and directors, and passed before me, notary, and shall perfect and finish the work in the said act contracted to be done, according to the true intent and meaning of the same, then this obligation shall be void, but otherwise remain in full force and virtue in law. And James Pitot, of this city, esq., president of the said company, being present, accepts by his signature hereto this obligation, for and in the name of the said president and directors.

Thus done and passed at New Orleans, this tenth day of October, one thousand eight hundred and twelve, in presence of George Pollock and Carlile Pollock, witnesses, who hereunto sign their names with the parties, and me, notary.

(Signed,) DANIEL CLARK,
BEV. CHEW,
DUSUAU DE LA CROIX,
GEORGE POLLOCK,
N. LYND, *Not. pub.*

A true copy.
New Orleans, 19th January, 1849.

(N. B.) Carlile Pollock, one of the witnesses, has not signed.
[SEAL.] THEO. GUYOL, *Notary.*

Exhibit (P) filed with the answer of F. D. de la Croix.

Pardevant Marc Lafitte, notaire public, dument commissionée pour la ville et paroisse de la Nouvelle Orléans, second district senatorial de l'état de la Louisiane, y demeurant, et en présence des temoins ce après nommée et soussignés.

Fut présent Monsieur Richard Relf, demeurant en cette ville, lequel au nom et comme executeur testamentaire de feu sieur Daniel Clark, et administrateur des biens composant sa succession, et par suite de venue à l'encan fait par le registeur de la cour des probates, les quatre et cinq du present mois a par ces presentes, vendu, cédé, et transporté, des maintenant et à toujours, avec promesse de guarantir de tous troubles quant à la propriété et des maladies prévus par la loi, ainsi que de toutes dettes et hypothèques comme et est constaté par le certificat du conservateur en cette ville à la date de ce jour, à Monsieur François Dusuau de la Croix, habitant et proprietaire en cette paroisse, acquereur pour lui, ses heritiers, ou ayant causes, vingt-trois esclaves, dont les noms suivent, savoir: Polly et ses deux enfans, John et Julien, Meron, Phœbe, Hebo, Tom, Turkey John, John, Jambon, Fanny, Wallace, Leven, John, Winny, Esther, James McCall, Hannah, Phil, Betsy Monson, Esther, Morning, Cambridge et Rachael; tous lesquels esclaves sont parfaitement connus du sieur acquereur et font partie des biens de la succession du dit feu sieur Daniel Clark, à qui ils appartenaient.

La présent vente est fait pour et moyennant la sum totale du huit mille huit cinq piastres, prix des vingt-trois dites esclaves sus denommées, et la quelle somme le sieur acquereur a payé comptant desa vant ces présentes au sieur vendeur, qui le reconnait et en sa dite qualité donne par ces présentes bonne et valable quittance et décharge au sieur acquerer, avec renonciation au benefice de loi non numerata pecunia, et autres à relatives.

Au moyen de quoi le sieur vendeur et dits noms et qualité qu'il agit transporte au sieur acquereur toutes les droites de propriété qu'avoit et pouvoit avoir le Sieur Daniel Clark, et que peuvent pretendre ses heritiers sur les vingt-trois esclaves vendus en ces présentes pour par le sieur acquereur, qui se reconnoit en bonne et due possession des ce jour, pour faire et desposer des dits esclaves en tout propriété comme d'un bien lui appartenant, en vertu des presentes; car ainsi, etc., promet, etc., oblegeant, etc., renonçant, etc.

Dont acte. Fait et passé à la Nouvelle Orleans, en l'etude le sixième jour du mois d'Octobre de l'année mil huit-cent treize, la trente-huitième de l'independance Americain, en presence des Sieurs Jean Baptiste G. Veron et Michel J. B. S. Fourcissy, tous deux témoins requis et domiciliés en cette ville, les quels ont ainsi que sieurs comparants signé avec moi notaire, après lecture faite.

DUSSUAN DE LA CROIX,
RICHARD RELF, *Ex.*
FOURCISSY,

J. VERON.
MARC LAFITTE, *Notaire Public.*

I hereby certify the foregoing to be a true copy of the original act from the archives of M. Lafitte, deposited in my office.
New Orleans, January 19, 1849.

A. MAZEREAU, [SEAL.]
Notary Public.

Exhibit R, filed with answer of F. D. de la Croix.

Be it known, that this day, before me, John Lynd, notary public in and for this city of New Orleans, personally appeared Richard Relf, of this city, merchant, acting executor of the last will of Daniel Clark, late of this city, deceased, and attorney in fact for Mrs. Mary Clark, of Germantown, in Pennsylvania, widow, universal heiress of the said late Daniel Clark, duly appointed by act of procuration proved before John Baker, mayor, at Philadelphia, on the 2d day of October last; and François Dusuau de la Croix, of this city, gentleman, who mutually covenanted, bargained, and agreed, as follows, to wit:

Whereas, by act passed before me, notary, on the tenth day of October, one thousand eight hundred and twelve, the said Daniel Clark, then living, did contract, agree, to and with the Orleans Navigation Company, for the digging out and enlarging canal Carondolet and the basin terminating the same, in the rear of the burnt hospital, upon certain conditions, and with various clauses and covenants in the said act contained, as by reference thereto will fully appear, for the consideration of the sum of fifty-five thousand dollars, of which the sum of thirteen thousand dollars has been already paid by said company to the said Daniel Clark in his lifetime; and whereas the said Daniel Clark did by act of same date, also passed before me, notary, sign and execute a bond, with two securities, to the said company, for the sum of twenty thousand dollars, conditioned for the due performance of all the clauses set forth in the said contract; and whereas the said executor and attorney is desirous to disburden the said estate and its heiress of the trouble and exertions which would be necessary to complete the undertaking *was* aforesaid contracted for; and the said François Dusuau de la Croix is willing to undertake the performance and full completion of the said work at his own cost and hazard: In consideration whereof, and also of the sum of one dollar in hand to him paid, the receipt whereof is hereby acknowledged, the estate and succession of the late Daniel Clark, and of his constituent, the said heiress, does by these presents grant, bargain and sell, assign, transfer, and set over, unto the said François Dusuau de la Croix, his heirs and assigns, the said recited contract, and all the rights, title, interest, property, claim, and demand of the said succession and heiress of, in, and unto the said contract, and of, in, and to the sum of forty-two thousand dollars, now remaining unpaid, of the price and consideration specified and set forth

in the same. To have and to hold the said contract, and to receive and take all the said sum unpaid at present, and thereby secured to the said Daniel Clark, his heirs and assigns, and the said executor and attorney for the said estate and the heiress, his constituent, and his heirs, doth hereby covenant and agree, to and with the said F. D. de la Croix, his heirs and assigns, that no greater sum has been received on account of the said contract than the said amount of thirteen thousand dollars, and for the remaining sum of forty-two thousand dollars the said contract is still in full force and not satisfied, vacated, released, or otherwise discharged; and also that he, the said executor and attorney, has not at any time heretofore done, nor committed, nor will he, his successors, his constituent, or her heirs, at any time hereafter, do any act, matter, or thing whatsoever, by means whereof the said contract shall or may be vacated or discharged, without the consent of the said F. D. de la Croix or his heirs; but that the said succession and heiress and her heirs shall permit and allow all such action, or actions, or other process, to be had upon the said, and permit his, her, or their name or names, to be made use of therein, as the said F. D. de la Croix, his heirs and assigns, shall think fit, to sue forth and prosecute when and as often as there shall be occasion; and the said executor and attorney does further covenant, promise, and agree, to and with the said F. D. de la Croix, that the said succession and its heiress shall and will at all times hereafter indemnify and save harmless the said F. D. de la Croix and his heirs, of and from all costs, charges, damages, and expenses incurred by the said Daniel Clark in his lifetime, or by his lawful representatives since his decease, in the prosecution of the said undertaking commenced by him and contracted for as aforesaid.

And the said François Dusuan de la Croix declared that he accepts the foregoing sale and assignment, and does, by these presents, put himself in the place and stead of the heirs of the said late Daniel Clark, and binds himself, and his heirs, that he and they shall and will well and truly perform and fulfil all and singular the clauses, covenants, and stipulations contained in the said contract, (with which he is well acquainted,) as undertaken by the said Daniel Clark to be performed and fulfilled towards the said Orleans Navigation Company, according to the true intent and meaning thereof, in as full and ample manner as if he himself had been the original contracting party; and he further declared, that he and his heirs shall and will, at all times hereafter, save, indemnify, and keep harmless the heirs of the said Daniel Clark of and from all costs, charges, damages, and expenses, and all actions, suits, claims, and demands whatsoever, *with* the said Orleans Navigation Company may or shall hereafter make, for or by reason of the said recited contract for any matter or thing done, or alleged to be done, or left undone, or alleged to be left undone, from and after the day of the date hereof.

And it is mutually covenanted and agreed, that the before recited act of obligation and security shall be in no wise impaired, nor shall the security which the said company now possesses by virtue thereof, be in any

manner affected or lessened by the passing of this act of sale and assignment; and that the said F. D. de la Croix accepts these presents under all the penalties and forfeitures in the said act contained.

And thereupon appeared Paul Lanusse, esq., the president of the said Orleans Navigation Company, who, after having the foregoing read to him, declared that he is duly authorized by the said company to express their assent to this act, and does, for them and in their name, by his signature, hereto express that assent.

Thus done and passed at New Orleans, this 11th day of December, one thousand eight hundred and thirteen, in presence of George Pollock and Abner L. Duncan, witnesses, who hereunto sign their names with the parties and me.

(Signed) PAUL LANUSSE, *President.*
RICHARD RELF,
Executor of the estate of D. Clark.
RICHARD RELF,
Attorney in fact of Mary Clark.
DUSUAN DE LA CROIX,
GEORGE POLLOCK,
A. L. DUNCAN.
JOHN LYND, *Notary Public.*

I certify the foregoing to be a true and correct copy of the original act.

[SEAL.] THEO. GUYOL,
Notary public.

New Orleans, 19th January, 1849.

Exhibit (S,) filed with the answer of Francois D. de la Croix.

Pardevant Marc Lafitte, notaire public, dument commissionée pour la ville et paroisse de la Nouvelle Orleans, second district senatorial de l'Etat de la Louisiane, y demeurant, et en présence ci-après nommés et soussignés.

Fut présent Mr. Richard Relf, negociant demeurant en cette ville, lequel au nom et comme exécuteur testamentaire de feu Sieur Daniel Clark, et encore au nom et comme fondé de la procuration générale et speciale de Dame Mary Clark, mère du défunt Sieur Daniel Clark, et la seule et unique heritière, la dite procuration délivrée en présence de temoins par acte sous la date du premier, par devant l'honorable John Barker, maire de la ville de Philadelphia, le deux du même mois, et enregistrée sur le registre N, folio 145 and 146, de l'office de Mr. Clement Biddle, notaire public en la dite ville de Philadelphia, le quatre du même mois d'Octobre, à le dit Sieur Richard Relf, en ses dites qualitée, vend, cede, et transferre, comme de fait il vend, cede, et transporte, par ces présentes avec promesse de garantir de tous troubles quant à la propriété et des malades preveues par la loi, ainsi que de bienes, dettes et hypothèques même de cettes mentionées au certificat du conservateur en cette ville à la date de ce jour, et pour lesquels

et sus ci-après stipulé à Monsieur François Duseau de la Croix, habitante de cette paroisse ici présent et acceptant acquereur pour lui, ses heritiers ou ayant causes, cinquant-cinq negres, esclaves, ci-après denommées, savoir: Salomon, agé de quarante ans, Jacob de vingt-cinq ans, Jacques de dix-huit ans, Paul de vingt-deux ans; Randolph de trente ans, Ned de trente ans, Isaac de vingt ans, Austin de vingt-cinq ans, Janvir de seize ans, Charles de trente-cinq ans, Jacques, mulatre, de trente ans, Cardena de vingt-cinq ans, Jeremie de trente-cinq ans, Davis de vingt ans, *Bob* de vingt-six ans, Boeu de quarante ans, Thom de trente-cinq ans, Haley de trente ans, Harry de quinze ans, Cox de quarante ans, Sam de quarante ans, Janvier de quarante ans, Rose de vingt-cinq ans, Porter de quarante-cinq ans, Chloe de trente ans, Lucy Morrow de trente-cinq ans, George de dix ans, Sam de quarante ans, Grace de dix ans, Elijah de dix ans, Spencer de quarante-quatre ans, Fleman de vingt-cinq ans, Doriana Smith de seize ans, Little Winey de vingt-cinq ans, Judith de vingt-cinq ans, Betty de ving-six ans, George, mulatre, de trente ans, Davee or Dives de cinq ans, Ben de vingt-six ans, Jack de vingt-cinq ans, Mary de trente ans, Joe de quinze ans, Sucky de douze ans, Victoire de dix ans, Joe de seize ans, Davis de trente ans, John Harrod de vingt-cinq ans, Wallis de trente ans, Andre de quarante ans, Squire enfant, Tom enfant, Davis enfant, Anne enfant, Gabriel enfant, George de dix ans, tous lesquels esclaves font parties de la succession de feu Sieur Daniel Clark, auquels appartennient.

La presente vente est faite pour et moyennant la somme de vingt et un mille, deux cent piastres, sur laquelle le sieur acquereur a payé comptant celle de sept mil sept cent soixante piastres au sieur vendeur, qui le reconnait et en donne, en les dites qualités, bonne et valable quittance à valoir au sieur acquereur de pour toutes renonciations de droits à la loi non numerata pecunia, et autres à ce relatives.

Quant au treize mille quatre cent quarante piastres de solde du prix principal de la present vente le sieur acquereur promets et s'oblige de les payer en l'acquit de la succession du sieur Daniel Clarke à Madame Veuve Hardy de Boisblanc, est à qui cette somme due conformément à l'obligation hypothécaire à mon rapport, sous la date du dix neuf Mai de la presente année, lequel paiement s'effectuera à la chacun partie au dit acte. Et sous le condition sous établies le sieur Richard Relf en dites qualités qu'il agit transporte au sieur acquereur tous les droits de propriétés qu'avait feu sieur Daniel Clark, et que prétender aujourd'hui la dame Mary Clark, son heritiere, sur les cinquante-cinq esclaves sus denommés et vendu, pour par le dit sieur acquereur qui a reconnait en bonne et due possession des ce jour pour faire et disposer de ces esclaves en toutes propriété comme d'un bien lui appartenant, en vertu des présentes.

Et les parties ayant pris connaissances d'un certificat du conservateur des hypothèques cette portion sur quatorze esclaves sus denommées en faveur de la dame veuve Hardy De Boisblanc, en vertu de l'obligation hypothécaire sus relates du à la charge du sieur Duseau de la Croix, acquereur, confornément à l'obligation par lui prisés en ces présentes

à l'egard de la négress Rose, et des négres Jack et Tom, que par ces sont l'hypothèqués en faveur du sieur S. Henderson, et du négre Jacques, qui parait hypothèqué en faveur des heritiers de J. B. Castellan. Mr. Relf observe que ce ne peut être que par erreur occasionnée par l'identité des noms du qu'il y avait dans la succession beaucoup de négres du même nom, et qui ont été vendus avec les habitations dont ils dependaient; promettans au surplus de garantir le sieur acquereur de tous troubles à cet egard.

Car ainsi acte convenu réglé et accepté, entre les parties; promettant, &c., obligéant, &c., renonçant, &c., dont acte:

Fait et passé à la Nouvelle Orléans, en l'étude le onzième jour du mois de Decembre, de l'année mil huit cent treize, la trente-huitième de l'independance, ainsi *receiver* en présence des sieurs Jean Baptiste G. Veron, S. Michel Ba. Fourcisy, tous deux témoins requis et domiciliés en cette ville, lesquels ont ainsi que les parties signés avec le notaire après lecture faite.

Signé RICHARD RELF, *Ex.*
DUSUAN DE LA CROIX.
JUAN FOURCISY.
Mc. LAFITTE, *Notaire Public.*

I hereby certify, the foregoing to be a true copy of the original from records of Marc Lafitte deposited in my office.

New Orleans, January 19th, 1848.

A. MAZAREAU,
Notary public.

Replication of complainants, filed February 7th, 1849.

EDMUND P. GAINES and Wife
vs.
DUSUAU DE LA CROIX, Richard Relf, and Beverly Chew.

United States circuit court, 5th circuit, district of Louisiana. In chancery.

The replication of Edmund P. Gaines and Myra Clark, his wife, complainants, to the answer of François Dusuau de la Croix, defendant.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies in the answer of said François Dusuau de la Croix, for replication thereunto say, that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby

well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ever ready to aver, maintain, and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

P. C. WRIGHT,
Solicitor for complainants.

Endorsed: Filed February 7, 1849.

ED. RANDOLPH, *Clerk.*

And afterwards, to wit, on the 14th March, 1849, the following order was entered of record in the minutes:

Ed. P. Gaines and Wife
vs.
Relf, Chew, et De la Croix. } No. 1731.

In consideration of stipulations between the parties hereto represented by their solicitors, P. C. Wright and G. B. Duncan, esq., and on file in this cause, it is ordered, that Wm. H. Cleaveland, esq., of Biloxi, in the State of Mississippi, attorney and counsellor at law, be appointed a commissioner to take the testimony of Madame Rose Caillavet *and* née Carriere and Madame Sophie Despau née Carriere, two witnesses to be produced and examined on behalf of the complainants, and that said Cleaveland shall return the commission directed to him, with the testimony taken by virtue thereof, under his seal, to the clerk of the United States circuit court, for the district of Louisiana.

Stipulation, filed March 14, 1849.

E. P. Gaines and Myra Clark, his wife,
vs.
Richard Relf, Beverly Chew, and François Dusuau de la Croix.

United States circuit court, 5th circuit, district of Louisiana. In chancery.

It is hereby stipulated and agreed by the parties thereto, by their respective solicitors, that William H. Cleaveland, esq., of Biloxi, in the State of Mississippi, attorney and counsellor at law, be appointed a commissioner to take the testimony of Madame Rose Cailavet née Carriere and Madame Sophie Despeau née Carriere, two witnesses to be produced and examined on the part of the complainants; and that said Cleaveland shall return the commission directed to him, with the testimony taken by virtue thereof, under his seal, to the clerk of the United States circuit court, for the district of Louisiana, dated New Orleans, March 13th, 1849.

P. C. WRIGHT,
Solicitor for complainants,
G. B. DUNCAN,
For Chew, Relf, and De la Croix.

And afterwards, to wit, on the 27th day of April, 1849, the following order was made by the court, and entered of record in the minutes:

122, Ed. P. Gaines and Wife vs. Relf, Chew, & Hopkins & als.
1,731, Same " Frs. Dusuau de la Croix.
1,728, Same " Antoine Cavalier et als.
1,729, Same " John S. Minor et als.
1,785, Same " Norbert Lorque et als.
1,784, Same " R. R. Barrow et als.
1,408, Same " Giroseau Richards et als.

On motion of P. C. Wright, counsel for complainants, it is ordered, that Mr. William H. Hunt, a commissioner of the court, residing in the city of New Orleans, be, and he is hereby, appointed examiner to take the testimony of witnesses to be produced and examined on the part of complainants, and to receive and file any and all exhibits or documentary evidence offered by complainants, and that he return the said testimony of witnesses, and said exhibits or documentary evidence, into court with all convenient despatch.

Stipulation.

And afterwards, to wit, on the 24th of May, 1849, the following stipulation was filed in this cause, viz:

U. S. circuit court, 5th circuit, district La.

EDMUND P. GAINES AND WIFE
vs.
FRANÇOIS DUSUAU DE LA CROIX, Richard Relf, and Beverly Chew. } In chancery—No. 1,731.

It is hereby stipulated on the part of the parties to the above suit, by their respective solicitors, that all the testimony, exhibits, and other documentary evidence, taken and to be taken by Wm. H. Hunt, esq., commissioner of this court, or by any other person duly authorized in the suit of Gaines and Wife vs. Relf, Chew, and others, No. 122, on the docket of this court, taken or filed since issue joined in this suit, may be read on the hearing of this cause with the same force and effect, and subject to the same objections and exceptions, as if taken regularly in this cause.

It is further stipulated, that the testimony taken de bene esse in said cause, No. 122, may be read on the hearing of this cause, as against any party against whom it may be decided, that it is admissible in case he or they were a party or parties in the suit No. 122. It is the intent and purpose of this stipulation to save the trouble and expense of examining witnesses more than once to the same points relating to the status and pretensions of the complainant, Mrs. Gaines, against either of the above parties, defendants; also in any suit now pending, or hereafter to be brought by said complainants, in which the said Richard Relf and Beverly Chew may be made defendants.

Dated New Orleans, May 22, 1849.

P. C. WRIGHT, *Sol'r for complainants.*
G. B. DUNCAN,
For Chew and Relf, and for De la Croix, and for C. Roselius, sol'r for Devereaux.

And afterwards, to wit, on the 8th day of June, 1849, the following order was made and entered of record on the minutes, viz:

EDMUND P. GAINES and Myra Clark, his wife,
vs.
FRANÇOIS DUSUAN DE LA CROIX et als. } No. 1731.

Upon suggesting to the court the death of Edmund Pendleton Gaines, one of the complainants in the foregoing entitled suit, who was made a party complainant thereto in the right of his wife, the said Myra Clark, and no abatement of said suit having resulted from his death, on motion of P. C. Wright, of counsel for complainants, it is ordered that the said suit be hereafter proceeded in, in the name of Myra Clark Gaines as complainant.

And afterwards, to wit, on the 14th day of June, 1849, the following order was made and entered of record on the minutes, viz:

122, Myra Clark Gaines vs. Richard Relf, Beverly Chew, et al.
1728, Same complainant vs. Antoine Cavellier et al.
1408, Same complainant vs. Charles Matthews et al.
1729, Same complainant vs. Holliday, Minor, Kenner, et al.
1731, Same complainant vs. François Dusuan de la Croix et al.
1784, Same complainant vs. Robert R. Barrow et al.
1785, Same complainant vs. Norbert Louque et al.
1408, Same complainant vs. Madison Lyon et al.
1729, Same complainant vs. John S. Minor et al.
1820, Same complainant vs. John F. Miller et al.

On motion of P. C. Wright, of counsel for complainant, and G. B. Duncan, I. T. Preston, J. Lavergne, of counsel for certain of the defendants, being present and consenting thereto, it is ordered that publication of the testimony, taken and to be taken in the State of Louisiana, since issue joined in each of the foregoing causes, shall be passed on the first Monday of July next, and that the period for taking testimony in the said causes, by either of the parties in the State of Louisiana, shall terminate on that day, reserving to either party all such exceptions to the admissibility of said testimony as go to the substance thereof, and not to the form or manner of taking the same. It is further ordered, that the several commissions which have been already issued to take the testimony of Bishop Chase, D. W. Coxe, Samuel B. Davis, and P. Hickey, witnesses in the above causes, shall be opened by the clerk of the court, upon the application of either of the parties, in case they shall not be returned before the first Monday in July next; and, in case said commissions shall be returned before said first Monday in July, then publication thereof may be made previously, by application to the clerk to open the same; also publication may be in like manner made of the testimony to be taken by any commission hereafter to be issued in the above causes, on application to the clerk by either party. It is further ordered, that either party may take out a com[mission] to take testimony at any time before the first Monday in July next; and said

commission or commissions, when returned into the clerk's office, may be opened by application to the clerk, as aforesaid. The publication of any testimony made after and under this agreement, is in no manner to preclude either party from taking testimony under commission out of the State of Louisiana, under the orders and rules of the court, if such party has otherwise a right to do so. This order is not to be construed as precluding any party from applying to the court under special circumstances, and for special cause shown for additional time, provided that the hearing of this cause shall not be delayed beyond the time fixed in this order, unless by reason of unforeseen or unavoidable circumstances. It is further ordered, that *that* the above causes be, and they and each of them are hereby, set for hearing on the second Monday in November next.

And afterwards, to wit, on the 10th day of December, 1849, the following order was entered in the "chancery order docket," viz:

122, Myra Clark Gaines vs. Relf, Chew, and others.
1728, Same vs. Antonio J. Cavelier and others.
1731, Same vs. François Dusuau de la Croix et al.
1785, Same vs. Norbert Louque et al.
1729, Same vs. John S. Minor et al.
1784, Same vs. Robert R. Barrow et al.
1408, Same vs. Madison Lyon et al.

On motion of P. C. Wright, of counsel for complainant in the foregoing suits, it is ordered that the same be set down for hearing on the 17th day of December instant, at the opening of the court on that day, or as soon thereafter as counsel can be heard; and, on like motion, it is ordered that the defendants therein show cause on the same day, and before the hearing of said causes on the merits, why the testimony and documents offered therein on the part of defendants which have been excepted to by complainant, should not be suppressed at the cost of the defendants. It is further ordered, that a copy of this rule be served upon G. B. Duncan, I. T. Preston, M. Black, Jules Lavergne, M. V. Labarre, Janin & Taylor, H. D. Ogden, T. G. Morgan, Thomas H. Lewis, Robert Preaux, and J. H. Holland, esqs., solicitors for said defendants.

And afterwards, to wit, on the 29th day of January, 1850, the following entry was made of record on the minutes, viz:

122, Myra Clark Gaines vs. Relf, Chew, Hopkins, et als.
1731, " vs. Frs. Dusuau de la Croix et al.
1729, " vs. John S. Minor et als.

By consent of the solicitors representing the parties herein, these causes are considered as being before the court for trial; and it is ordered that an entry be made on the minutes to that effect.

And afterwards, to wit, on the 21st February, 1850, the court rendered final judgment as follows:

[Rec. ct., D. T. 1851.]—7

MYRA CLARK GAINES
vs. } No. 1731.
F. DUSUAN DE LA CROIX et als.

This cause having been argued and submitted at a former of day this term, and the court having maturely considered the same, this day delivered its opinion; and in conformity thereto, ordered, adjudged, and decreed, that complainant's bill be dismissed with costs.

Judgment rendered 21st February, 1850; signed 4th March, 1850.

THEO. H. McCALEB, *U. S. judge.* [SEAL.]

And after the rendition of the judgment or decree as above set forth, to wit, on the 21st day of February, 1850, the following order of appeal was made and entered on the minutes:

122, Myra Clark Gaines vs. Relf, Chew, Hopkins, et als.
1731, Same vs. F. Dusuan de la Croix et als.
1729, Same vs. John S. Minor et als.

The complainant comes into court, and prayed an appeal to the next term of the Supreme Court of the United States, to be holden at Washington city, from the decree rendered in these causes in this court; which application is granted by the court, upon the plaintiff's giving bond in each cause in the sum of five hundred dollars, with Francis L. Lyon and George S. Gaines, as sureties; which bonds being tendered in court, were approved and ordered to be filed.

Circuit court of the United States, fifth circuit and eastern district of Louisiana, clerk's office.

I, John W. Gurley, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 87 pages, together with the evidence offered by the parties in the suit of Myra Clark Gaines vs. Relf, Chew, et als., No. 122 of the docket of this court, and embodied in the transcript of the record of the said suit to which reference is here made, (as by stipulation of counsel, found on page 83 of this record,) contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Myra Clark Gaines vs. François Dusuau de la Croix, Richard Relf, and Beverly Chew, No. 1731 of the docket, so far as the same now remain of record and on file in said court.

Witness my hand and seal of said court, at New Orleans, this 26th day of September, A. D. 1850.

J. W. GURLEY, *Clerk.*

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that John W. Gurley, whose name is signed to the above certificate as clerk of the circuit court of the United States, for the fifth circuit and [SEAL.] eastern district of Louisiana, was, at the time of signing said

certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 26th day of September, A. D. 1850.

THEO. H. McCALEB. [SEAL.]